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LEGAL SERVICES CORPORATION ACT AMENDMENT

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KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 7005

TO AMEND TITLE 42, UNITED STATES CODE

OCTOBER 29 AND 31, 1975

Serial No. 17



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LEGAL SERVICES CORPORATION ACT AMENDMENT

WEDNESDAY, OCTOBER 29, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Drinan, Badillo, Pattison, and Railsback.

Also present: Gail P. Higgins, counsel; and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The committee will come to order.

Today and on Friday, October 31, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice will hold hearings on H.R. 7005, a bill to amend the Legal Services Corporation Act of 1974.

[A copy of H.R. 7005 follows:]

(1)

94TH CONGRESS
1ST SESSION

H. R. 7005

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1975

Mr. KASTENMEIER (for himself, Mr. RAILBACK, Mr. DANIELSON, Mr. DRINAN, Mr. BADILLO, and Mr. PATTISON of New York) introduced the following bill; which was referred to the Committees on Education and Labor and the Judiciary

A BILL

To amend title 42, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subsection (3) of section 1006 (a) of the Economic
4 Opportunity Act of 1964 (42 U.S.C. 2996e) as added by
5 the Legal Services Corporation Act of 1974 is amended to
6 read as follows:

7 “(3) to undertake either directly or by grant or
8 contract, the following activities relating to the delivery
9 of legal assistance—

10 “(A) research,

11 “(B) training and technical assistance, and

1 " (C) to service as a clearinghouse for infor-
 2 mation."

Mr. KASTENMEIER. The purpose of the bill is an amendment which would clarify the authority of the Legal Services Corporation Board to fund backup centers, either directly or by grants or contracts, to allow the new Legal Services Corporation the flexibility it might require to provide quality legal assistance to the poor in civil legal problems.

Today, some 16 backup centers provide support services to local legal services projects. It is being argued that after March 31, 1976, the Federal funding for these centers will end unless H.R. 7005 is passed.

Since there may well be some ambiguity in the Legal Services Corporation Act of 1974, H.R. 7005 would certainly remove the confusion and allow the Board of the Corporation the option of funding these centers by grant or contract.

The Legal Services Corporation, over which the House Committee of the Judiciary has supervision, is an important vehicle for insuring that the poor and disadvantaged of this country are granted equal access to the courts. The Board of the Corporation first met on July 14, 1975, and on October 14 the Corporation assumed full responsibilities for legal services programs. Today, we have invited Dean Roger C. Cramton, Chairman of the Board of Directors of the new Corporation, and dean of Cornell Law School, to comment on the legislation. In addition, the committee will hear from attorneys of two backup centers, Mr. Henry Freedman, director of the Center on Social Welfare Policy and Law, and Mr. James Lanigan, directing attorney of the Washington, D.C., office of the National Senior Citizens Law Center.

Mr. Gregory Dallaire, director of the Seattle-King County Legal Services and chairman of the Project Advisory Group, will discuss the relationship between local projects and the national backup centers.

We are also pleased to have as part of this distinguished group of witnesses today Mr. F. William McCalpin, chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

This morning we will start with the panel, and we welcome Mr. Henry A. Freedman, who is director of the Center on Social Welfare Policy and Law, and Mr. James A. Lanigan, as our first two witnesses. Gentlemen?

PANEL PRESENTATION OF HENRY A. FREEDMAN, ESQ., DIRECTOR, CENTER ON SOCIAL WELFARE POLICY AND LAW, NEW YORK, N.Y.; AND JAMES A. LANIGAN, ESQ., DIRECTING ATTORNEY, WASHINGTON, D.C., OFFICE, NATIONAL SENIOR CITIZENS LAW CENTER

Mr. KASTENMEIER. Mr. Freedman and Mr. Lanigan, the committee has your statements. Mr. Freedman has a 23-page statement and Mr.

Lanigan a shorter statement of some seven pages. Mr. Freedman, would you like to proceed first, and you may proceed as you wish.

In the event you care to summarize your statement, your statement in full will be accepted and printed in the record.

Mr. FREEDMAN. Thank you, Mr. Chairman and members of the subcommittee. I have submitted the written statement that you have just referred to and ask that it be inserted in the record and this morning I will summarize that statement and emphasize certain points that I feel are important.

Mr. Lanigan, who is here with me this morning, and I have been authorized to speak on behalf of Organization of Legal Services Backup Centers which is an organization formed some 5 years ago by the various backup centers affected by this legislation.

If H.R. 7005 or similar legislation is not enacted into law very soon, some of the most effective components of the legal services program, built painstakingly over the last 9 years of the program's existence, will be severely harmed and perhaps destroyed. Before discussing the need for this specific legislation I would like to take a moment to place the backup centers in the context of the overall legal services program and then describe their work and try to explain why they have been so effective.

Legal Services began as a component of the community action program in the U.S. Office of Economic Opportunity, approximately 10 years ago. The basic pattern of the program has remained unchanged. The Federal Government does not deliver legal services itself. Instead, local or not-for-profit corporations are awarded grants to render services to eligible clients in their communities. The local corporations are governed by boards of directors consisting of local attorneys, client representatives, and others.

During the first 5 or 6 years the legal services program expanded to a size of some 2,700 attorneys in almost 300 local programs throughout the country. Since that time, funding has remained constant and due to inflation the program size has accordingly shrunk somewhat. Indeed, the significant growth in the program as of late has been in the paralegal sector and there may be nearly half as many paralegals as attorneys.

During recent years the backup centers have had a total staff among them of perhaps 100 attorneys. The entire Legal Services appropriation has been \$71.5 million and out of this the backup centers received \$5 million, or 7 percent of the entire budget.

Why were the backup centers created as a component of the program? I think we have to look back to the outset of the program when from the start the local offices faced high case-loads and a rapid turnover of attorneys. The turnover can be attributed to a number of factors, including the low salaries the program has always been forced to pay and the incredible strain placed upon attorneys by the day-to-day confrontation with the frustrations and difficulties faced by poor people caught up in a tangle of legal problems.

These local problems have often, upon examination, turned out to be extremely complex. The law governing a case may have been contained in impossible to locate mimeographed policies from the welfare department or in complicated Federal legislation comprehended only by the administering agencies and the appropriate committees of the Congress.

It was therefore apparent from the earliest days that lawyers for the poor were going to have to develop expertise in new areas. The solution to meeting this need for expertise, that is, the backup centers as we now know them, evolved during these earliest years. The idea for backup centers probably began with Prof. Edward Sparer, now at the University of Pennsylvania Law School, who was the founder of the Center on Social Welfare Policy and Law. As an attorney for Mobilization for Youth, an experiment on the Lower East Side of New York, Sparer had begun to grapple with client welfare problems. In 1965, he obtained foundation funding for a project committing attorneys for the first time to specialize in welfare law.

The next year, that project, the Center on Social Welfare Policy and Law was funded by OEO Office of Legal Services and became the model for the various backup centers that followed.

Its experience is instructive. The staff of the center, the original staff, consisted of experienced lawyers who had served as attorneys for labor unions and the Department of Justice. As they examined the large areas of welfare law which had typically not been explored by advocates for the poor, they concluded that poor families receiving or seeking public assistance benefits were being denied benefits and procedural rights guaranteed to them by Federal law and the Constitution, and that litigation or aggressive agency advocacy would be necessary to enforce these rights.

This information was provided to attorneys in the field, but those attorneys often lacked the resources, the experience, and the knowledge necessary to represent their clients in such complicated matters.

Meanwhile, the center itself was barred from representation in those days and the skills and knowledge which could have been used to vindicate client rights were confined to research work. The center and the backup centers established in other areas of the law were then authorized to involve themselves directly in litigation and agency advocacy with the local lawyers; the result was a tremendous increase in effective representation for poor people during the next few years.

This brings us up to the present time. As I have mentioned, the backup centers are only a small segment of the legal service program in terms of budget or staff. The centers themselves are small, with the largest center having a professional staff of only 10. The attorneys in the centers have generally been among the best qualified and most experienced in the legal services program and their credentials, including national law schools, law review, and so forth, compare favorably to those attorneys in top firms or in the Department of Justice. They have also had substantial legal services and specialized experience.

For example, the four senior attorneys at my center have amongst them 20 years of legal services experiences, and one has an additional 11 years of welfare law experience at a Federal agency.

Each center now has a board of directors and an advisory board or a similar mechanism to assure accountability of the center to field programs and to clients. These centers provide specialized services to local field programs and in some instances to particular clients. If I could categorize them, some are what I would call advocacy centers, providing a full range of services to local lawyers and to clients.

There would be two categories of this type of center. The first, the center is concerned with one substantive area of poverty law, such as the national health law program or the National Juvenile Law Center,

and another group concerned with specializing in the problems of a defined segment of the poverty population, such as the migrant legal action program.

Other centers do not perform advocacy functions, but serve as a clearinghouse for information, provide management assistance to local problems, or conduct training programs. As a group, and individually, the backup centers have been so effective and useful because of the wide range of services they deliver.

In my written statement I describe these various types of activities and I will just summarize them now. Mr. Lanigan's testimony will also provide information on the types of activities provided by the backup centers.

The first type of service is answering inquiries. The backup centers receive thousands of questions from Legal Services lawyers and paralegals each year, and the larger centers report that they responded to over 2,000 inquiries each.

A second area of activity is manuals and standardized materials, newsletters, and specialized mailings. Law publishers do not provide analytical treatises and form books for poverty law matters similar to those always available in the tax field, estate law, securities, corporation law, and other areas of commercial practice. The legal services program has had to develop this capacity within itself and, of course, it is the backup centers that have prepared and maintained manuals in their own areas of work.

Many of the backup centers also maintain a mailing list of those lawyers and local programs specializing in particular areas and send bulletins or newsletters to discuss common experience and recent developments that affected their work.

Because these materials are advocacy materials, and this is a point I would like to stress, the materials will be critical of practices which appear to be in violation of law. For example, our center has prepared materials for lawyers and advocates representing Indians and material for Indians themselves which question the legality of certain policies of the Bureau of Indian Affairs. Thus, we don't simply state the rules that exist, but if in our examination of the rules we feel the client's rights have been violated, we lay this out so that local advocates will be able to challenge the system where there appears to be a violation of law.

This kind of service, of course, is absolutely vital to local programs providing representation.

Another form of activity of the backup centers is coordination of local program efforts. On the simplest level, when we find out that two or more programs are working on similar programs and have been in touch with us seeking assistance, we will put the programs in touch with each other so that they may benefit from each other's work and from other's experience. If there are a number of programs litigating or otherwise confronting certain issues, a backup center may begin an informal clearinghouse arrangement, keeping everyone posted on developments in other cases and providing advice and suggestions as matters proceed to help all of the programs perform more effectively.

Another area of activity is litigation. A backup center activity in this area takes many forms. Most often the involvement is an extension of the inquiry answering function. The backup center may give ex-

tensive litigation advice, may draft all or a part of a brief, or provide research assistance for particularly different questions that arise during the course of a case. Sometimes the backup center will be more extensively involved as cocounsel and some examples of this type of work are provided in my statement.

At other times, backup centers may participate as *amicus curiae* in cases having a major impact on the clients of legal services programs.

The record of the backup centers in this litigation work is impressive. Most of the cases which backup centers have been involved in either before the U.S. Supreme Court or lower courts have been successful. As Members of the Congress, you will be particularly interested in the fact that much of this litigation has involved enforcement of Federal law, that is, the backup centers have often served, in effect, as an enforcement arm of the Congress.

Another area of activity for many backup centers is agency advocacy. The backup centers represent clients in proceedings before State and Federal agencies and engage in informal negotiation with agencies in an attempt to obtain policy decisions favorable to clients.

My written statement describes the successful participation of the legal action support project which is a social science backup center in North Carolina, in a utility ratemaking procedure and the role of the national housing and economic development project and the Department of Housing and Urban Development for federally subsidized public housing.

In addition, in the agency area, backup centers are uniquely situated to comment on the legality of proposed regulations and on their impact on the poor. As a result, backup centers generally follow the Federal Register, advise local programs of significant proposed regulations, and submit comments based upon clients' problems and experience.

I know of one recent instance in which proposals that would clearly have harmed our clients were abandoned as a result of comments our center submitted.

Another area of activity is legislative advocacy. Legislation may offer the best and perhaps the only solution to a particular client's problem. It may also pose the greatest threat to the client's well-being. Usually Legal Services' clients are dependent on the Legal Services' lawyer for representation in the legislative forum. The backup centers have assisted local programs in this important area in a number of ways.

They have developed the capability of following developments in Congress and State legislatures so they can report to local programs on matters that may affect their clients. They are frequently the only place where legislative staff can be referred to for information on the effect of proposed or existing legislation on the poor.

Backup centers are also able to develop legislative solutions to client problems. An example would be the National Consumer Act which has been adopted by the State of Wisconsin which was drafted by the National Consumer Law Center.

Still another area of activity is training. Most of the backup centers have provided training to Legal Services' lawyers from time to time. Nevertheless, the need for centers expert in training techniques and theory was recognized a number of years ago based upon experience

and the Legal Services' training program and the National Paralegal Institute were established. Both of these programs have offered training for several years and that training has been extremely well received. Training sessions take several days, involve the use of specialized techniques, such as videotape and roleplaying, and provide small groups to assure the greatest individual attention.

A final area of activity would be the clearinghouse function. A backup center, the National Clearinghouse for Legal Services, obtains and catalogs all significant papers and publicizes those papers through its monthly magazine, the Clearinghouse Review.

This is an absolutely vital service which the legal services program had to develop for itself and by all accounts, it is now being provided in an outstanding manner by an independent national backup center.

In sum, the backup centers perform a wide range of functions which are necessary to a program which is seeking to provide comprehensive and professional services to its clients. Most importantly, these backup center services have been delivered extremely well, as was made clear in the most recent evaluations of the centers conducted in 1973. Those evaluations were ordered by individuals in the U.S. Office of Economic Opportunity who had set out to destroy the centers and they hoped that the evaluations would arm them with the ammunition to close the centers.

Teams of law professors, private lawyers, management experts, and others were retained. Those experts examined the centers and to the dismay of the officials of the agency at that time, concluded almost unanimously that the backup centers were providing a full range of services described above and in an exemplary manner.

There are many factors that have enabled the backup centers to deliver so many services so effectively. Since it will be impossible for the center to retain all of these attributes unless the amendment contained in H.R. 7005 is passed, and that is the problem that brings us here today, it is necessary to identify some of these factors.

Two factors that have made the backup centers highly effective that are not themselves endangered by the current legislation are specialization and national perspective. I won't expand upon these points at all because as I said, the act doesn't threaten them, and it is the other attributes that are at issue.

One critical attribute of the existing centers is their multifunctional approach to the problems that they face. The backup centers, particularly the substantive or advocacy centers, have been effective in large part because they have been able to service Legal Services lawyers and clients in such a variety of ways and have therefore been able to determine the most effective approach to each problem that is presented. They litigate where that appears to be most appropriate or deal with an administrative agency if it seems that a policy could be changed without litigation. They advise all Legal Services lawyers of effective means of action or trained lawyers, if that seems most likely to assure protection of clients' rights.

The experts in a specific area therefore have been available for the most important work in that area at any particular time, whether or not a client representation was involved.

As a result of this multifunctional approach, the local legal services programs have received the full benefits of the skills of well-qualified

lawyers, and the backup centers have been able to attract topflight talent because of the opportunities offered.

This has made available to the local services the advice and assistance of able and creative persons who can speak from current experience because they themselves are advocates currently involved in representation.

The last thing that a harried Legal Services lawyer in the field needs is theoretical advice on a problem from an attorney who is not practicing in that field himself or herself.

So much for the multifunctional approach. Another crucial attribute is independence. The backup centers have always been independent grantees, not-for-profit corporations or universities, not a part of the central administration of the legal services program. This independence has been absolutely critical to the effectiveness of the centers. For backup centers representing clients, the advocacy centers, independence is necessary to avoid conflict of interest and the possibility of undue influence on representation. Unlike lawyers in the Department of Justice, for example, who represent Government agencies, the Legal Services lawyers, although they are paid for out of Government money, represent private parties, often against the Government itself.

The importance of this independence has been recognized in the Legal Services Corporation Act itself which precludes a corporation from providing direct client representation.

Independence is crucial for the nonadvocacy centers as well. Much of the successful training and management assistance that has been provided depends upon the trainees' candid assessments of their own weaknesses and the weaknesses of their programs. Such candor could not be expected, I would submit, if the training and assistance is being provided by the very agency that also provides the funds for the programs.

I would stress that independence does not mean that the backup center is not accountable to its funding source. The Office of Economic Opportunity placed special conditions on grants where problems were perceived. Programs were evaluated and asked to cure deficiencies. Work programs were included in all funding proposals. Restraints of this sort have continued to be placed on all grantees and are consistent with independence in the conduct of day-to-day activities.

Another attribute of the centers that I believe is critical is their credibility in the community that they serve. Over the past 9 years the backup centers have won the confidence of the lawyers and clients in the field by proving that they are committed to the clients' interests and are not abstract "think tanks" pursuing their own theories. This trust has caused lawyers and clients to accept advice that may be bitter, such as that a case should be abandoned as hopeless, even though the client is suffering gravely, and unfortunately this is a type of advice that backup centers are often called upon to give and it has encouraged the lawyers to call upon the backup centers to take over major responsibility for difficult cases. This trust is essential to the candor needed in training and self-analysis, as discussed above as well.

The final attribute that I would mention is congeniality of working arrangements. Even with the total uncertainty that has surrounded the future of the backup centers for the past 2½ years, the centers have proved to be very exciting places for lawyers and other professionals

to work. Since each center is small, there is great camaraderie. The freedom to select the best course for dealing with each problem assures full use of the talents of each member of the staff.

These attractions are essential, because the backup centers, like the local legal services programs, cannot compete for legal and other professional talent on the basis of salaries and fringe benefits, and the future of the centers is hardly so secure that they appear to offer a career.

This brings up to the Legal Services Corporation Act of 1974. I believe the committee is familiar with the impact of that act which attempts to bifurcate or would appear to possibly bifurcate the representational functions that I have been describing and certain other training activities from all other sorts of training, technical assistance and research. This bifurcation means that the talented staff that has been developed by the centers will not be available for research and technical assistance to local grantees. The Board of Directors of the Legal Services Corporation, has asked its staff to undertake a study of how, under the existing legislation, the Corporation may best provide the types of services now offered.

At its meeting earlier this month, the Board determined that it would take until the end of June 1976 to complete this study and take action based upon that study. I am confident that when it completes that study it will conclude that independent multifunctional backup centers are essential for an effective program.

Unfortunately, we in the centers are now operating on our final grants from the Community Services Administration, and those grants run through March 1976. Congress must therefore act now to restore the authority for independent multifunctional backup centers so that the Board of the Legal Services Corporation may keep the centers alive until it has had time to make whatever decision it determines is best in the interests of the clients of the program.

If speedy action is not taken, there is a great danger that the backup centers, at least as we know them, will be destroyed. Professional staff has held on through all of this uncertainty, but we cannot expect everyone to stay right through March unless there is a substantial encouragement, to say the least. Long-term projects, such as preparation of manuals or commencement of major litigation, cannot be undertaken. Admittedly, we will face uncertainty in the next few months, even if the legislation is passed, for the Corporation will be deciding what funding action to take.

But, we are confident that, together with the local programs and the clients, we can convince the Corporation of our merit, if we are only given a chance.

Thank you, Mr. Chairman and members of the committee.
[The prepared statement of Henry A. Freedman follows:]

STATEMENT OF HENRY A. FREEDMAN IN SUPPORT OF H.R. 7005

Mr. Chairman and members of the subcommittee, I am Henry Freedman, Director of the Center on Social Welfare Policy and Law in New York City. The Center is one of the sixteen national legal services back-up centers affected by H.R. 7005. Mr. James Lanigan, who is here with me this morning, and I have been authorized to speak on behalf of the organization¹ formed some five years ago by the various back-up centers.

¹Organization of Legal Services Back-Up Centers (OLSBUC).

Responsibility for oversight of the federal legal services program was transferred to your subcommittee earlier this year. Your staff has devoted considerable effort during this short period of time to learning about the legal services program, and has by now visited most of the back-up centers affected by the legislation under consideration this morning, H.R. 7005.

This legislation is absolutely vital. If H.R. 7005 or similar legislation is not enacted into law within the next two or three months, it is likely that some of the most effective components of the federal legal services program, built painstakingly over the last nine years of that program's existence, will be destroyed.

Before discussing the need for this legislation in detail, I would like to place the back-up centers in the context of the legal services program. Legal services began as a component of the Community Action Program in the Office of Economic Opportunity approximately ten years ago. During the first five or six years the legal services program expanded to a size of some twenty-seven hundred attorneys in almost 300 local programs throughout the country. Since that time, funding has been stagnant, and the program size has shrunk somewhat. The significant growth in the program as of late has been in the paralegal sector, and there may now be half as many paralegals as attorneys.

The Federal Government has not delivered legal services itself. Instead, local not-for-profit corporations were awarded grants, originally through the local Community Action Program, in order to render legal services to eligible individual clients and organizations in their local communities. The corporations were governed by boards of directors consisting of local attorneys, client representatives, and others.

Some of these local grantees are large programs in major cities; others are small programs in isolated rural areas. Some programs serve a large geographical area, such as the well known California Rural Legal Assistance Program, the program serving the Navajo Reservation in Arizona, Utah, and New Mexico, called DNA, and the statewide programs in a number of states. From the outset, all of these programs have faced high case loads and a rapid turnover of attorneys. The turnover can be attributed to a number of factors, including the low salaries the program has always been required to pay and the incredible strain placed upon attorneys by the day-to-day confrontation with the frustrations and difficulties faced by poor people in this country caught up in a tangle of legal problems.

These client legal problems have often, upon examination, turned out to be extremely complex. The "law" governing the case may have been contained in impossible-to-locate mimeographed policies from the welfare department, or in complicated federal legislation comprehended only by the administering agencies and the appropriate committees of the Congress.

It was therefore apparent from the earliest days of the program that lawyers for the poor were going to have to develop expertise in areas not previously developed by private attorneys, and that specialization was necessary for adequate representation. Indeed, this conclusion had been reached prior to the establishment of Legal Services Program by Professor Edward Sparer, now at the University of Pennsylvania Law School, who was the founder of the Center on Social Welfare Policy and Law. As an attorney for Mobilization For Youth, an experimental program on the Lower East Side of New York, Sparer had begun to grapple with client welfare problems. In 1965 he obtained foundation funding for a project permitting attorneys to specialize in welfare law. The next year that project, the Center on Social Welfare Policy and Law was funded by OEO Office of Legal Services and became the model for various back-up centers that followed.

The experience of the Center on Social Welfare Policy and Law is instructive. The staff of the Center consisted of experienced lawyers who had served as attorneys for labor unions and the Justice Department. As they examined the large areas of welfare law which had hitherto not been explored by advocates for the poor, they concluded that poor families receiving or seeking public assistance were being denied benefits and procedural rights guaranteed to them by federal law and the Constitution, and that litigation or aggressive agency advocacy would be necessary to vindicate these rights. This information was provided through training sessions and articles to attorneys in the field, but those attorneys often lacked the resources, experience, and knowledge necessary to represent their clients in such matters. Since the Center was originally barred from representation, its staff suffered the frustration of having the skills and knowledge which could have been used to vindicate those rights had they only

been available to clients. The Center, and back-up centers established in other areas of the law, were then authorized to involve themselves directly in litigation and agency advocacy with the local lawyers, and the result was a tremendous increase in effective representation of poor people during the next few years.

Of course victories for poor people meant losses for somebody else, and those who lost often attacked the legal services lawyers. But the lawyers were merely the advocates who brought the matters before the courts and agencies, however; the lawyers did not render the final decisions. Simply put, attorneys do not make policy or render decisions—they simply represent clients before a decision-maker. As new groups of people present their cases to decision-makers for the first time, familiar ways are upset. It was the success of the back-up centers in representing such new groups of clients and in helping local legal services programs to represent such clients that got them into trouble, a point I shall return to later.

There are sixteen so-called back-up centers directly affected by the restrictions contained in the Legal Services Corporation Act of 1974 which would be removed by H.R. 7005:

Center on Social Welfare Policy & Law, New York, New York;
 Harvard Center for Law & Education, Cambridge, Massachusetts;
 Indian Law Backup Center, Native American Rights Fund, Boulder, Colorado;
 Legal Action Support Project, Washington, D.C.;
 Legal Services Training Program, Washington, D.C.;
 Migrant Legal Action Program, Washington, D.C.;
 National Clearinghouse for Legal Services, Chicago, Illinois;
 National Consumer Law Center, Inc., Boston, Massachusetts;
 National Employment Law Project, New York, New York;
 National Health Law Program, Los Angeles, California;
 National Housing & Economic Development Law Project, Berkeley, California;
 National Juvenile Law Center, St. Louis, Missouri;
 National Legal Aid and Defender Association Management Assistance Program, Washington, D.C.;
 National Paralegal Institute, Washington, D.C.
 National Senior Citizens Law Center, Los Angeles, California;
 Youth Law Center, Western States Project, San Francisco, California.

The total funding for these centers is in the vicinity of \$5 million a year, which is about 7% of the legal services budget. Altogether they have fewer than 100 attorneys on their staff, with the largest center having only ten. These attorneys have generally been among the best qualified and most experienced in the legal services program, and their credentials compare favorably to those attorneys in top firms or the Department of Justice. Some centers are located at a University or other facility which provides additional benefits in a form of professional staff or research facilities. Each center has a board of directors, advisory board or similar mechanism to assure accountability to field programs and clients.

Each of these centers provides specialized services to the local field programs, and in some instances to particular clients. Some, such as the National Health Law Program or the National Juvenile Law Center, are concerned with one substantive area of poverty law. Others, such as the Migrant Legal Action Program, specialize in the problems of defined segments of the poverty population. Others do not perform advocacy functions, but serve as a clearinghouse for information, provide management assistance to local programs, or conduct training programs.

The back-up centers, individually and as a group, have been so useful and effective because of the wide range of services they deliver. The following summary of these activities is much too brief, but it will give you an idea of the importance of the back-up centers to the legal services program. The non-advocacy centers do not provide the types of services related to advocacy, of course.

ACTIVITIES OF BACK-UP CENTERS

1. *Answer inquiries.*—The back-up centers answer many thousands of questions from legal services lawyers and paralegals each year, with the larger centers reporting over 2,000 each. Most of the inquiries are from local legal services lawyers who call or write after failing to work out a solution to a client's problem. Sometimes the inquiry is made because the back-up center itself has identified and publicized problems likely to arise which are capable of solution.

Response to inquiries can take many forms. The back-up center may discuss the problem with the field lawyer, suggesting further factual matters that might be developed, areas of research which the local program or back-up center might

pursue, possible strategies for negotiating or otherwise resolving the problem without litigation, or tactical suggestions for initiating or successfully completing litigation. Other inquiries may be responded to by provision of standardized materials developed by the back-up center because of the frequency with which problems of that nature arise. Sometimes there is no solution to the client's problem, and the client must simply be advised that there is nothing a lawyer can do. This last type of assistance, however frustrating to the client, is invaluable to legal services program, for it prevents much possible wasted time and energy, and assures the local lawyer that he or she is not abandoning a claim that might have merit.

2. *Manuals and standardized materials.*—Publishers do not provide analytical treatises and form books for poverty law matters similar to those available in tax, estate, securities, corporation, and other areas of practice. The legal services program has had to develop this capacity within itself, and, of course, it has been the back-up centers who have prepared and maintained these materials. Manuals prepared by the back-up centers include the Consumer Law Handbook, a Lawyers Manual on Community-Based Economic Development, the Handbook on Housing Law, the Materials on Welfare Law, and Law and Tactics in Juvenile Cases.

Because these materials are advocacy materials, they will be critical of practices which appear to be in violation of the law. For example, our center has prepared materials for lawyers and other advocates representing Indians, and material for Indians themselves, which question the legality of certain policies of the Bureau of Indian Affairs. We do not simply state the rules that exist, but look to see if client rights are being violated, and, if so, how they might be vindicated. Such information is vital to the local programs.

3. *Newsletters and specialized mailings.*—Many of the back-up centers maintain mailing lists of those lawyers and local programs specializing in particular areas, and send bulletins or newsletters to discuss common concerns and to inform them of recent developments that may affect their work. Often these materials present very specific advice on handling particular types of matters. These newsletters, as well as the manuals described above, are helpful to local lawyers precisely because they are prepared by people who are currently engaged in representation of clients. As I will be discussing later, one of the unfortunate results of the provision in the Legal Services Corporation Act of 1974 barring funding of research and technical assistance by grant or contract is that the advice now given to local lawyers by practicing lawyers at the back-up centers will be replaced by advice from corporation staff who are not involved in advocacy.

4. *Coordination.*—The back-up centers coordinate the work of local programs in a number of ways. On the simplest level they will put local programs who are working on similar problems in touch with each other. If there are a number of programs litigating or confronting certain issues, the back-up center may begin an informal clearinghouse arrangement, keeping everyone posted on developments in other cases.

5. *Litigation.*—Litigation activity takes many forms. Back-up centers will often be co-counsel with local legal services programs in high impact cases in which expert assistance is required. I can give a few examples.

The National Employment Law Project helped the Cleveland Legal Aid in an employment discrimination case which resulted in a court order establishing an independent agency to determine the qualifications of persons being considered for entry into a construction union.

The National Health Law Program played a key role in the complicated trials that were involved in the half-dozen cases around the country brought by local programs to secure treatment of indigents in hospitals receiving funds under the federal Hill-Burton Act.

My center worked with local legal services lawyers in Colorado on a case which resulted in a unanimous Supreme Court victory last year holding that the United States Department of Health, Education and Welfare had misinterpreted federal law, and that working families receiving benefits under the Aid to Families with Dependent Children program were therefore entitled to deduct all work expenses from income.

At other times, back-up centers may be involved as *amicus curiae* in cases having a major impact upon clients of legal services programs. An example of such work would be the participation of the National Consumer Law Center as *amicus* in *Fuentes v. Shevin*, the Supreme Court decision holding certain replevin statutes unconstitutional. A back-up center might become involved as *amicus* upon request of the local legal services program, or if an issue frequently arising

in cases handled by legal services programs and back-up centers is going before a court where the law is likely to be settled for some time to come.

The record of the back-up centers in litigation is impressive. Most of the cases in which back-up centers have been involved, either before the United States Supreme Court or lower courts, have been successful. As members of Congress you will be particularly interested in the fact that much of this litigation has involved enforcement of federal law, and that all of it has been conducted most responsibly. The 1973 evaluations of the back-up centers, which will be discussed in a moment or two, made note of the highly professional manner in which back-up centers litigated, and praised their restraint. I read now from the evaluation of my program:

"They stand ready to litigate but are willing to and often initiate negotiations with the admirable purpose of avoiding litigation as it is possible to do so while, at the same time, serving the best interests of the clients."

6. *Agency advocacy.*—The back-up centers also represent clients in proceedings before state and federal agencies, participate in rule-making proceedings, and engage in informal negotiation with agencies in an attempt to obtain policy decisions favorable to their clients.

Thus, the Legal Action Support Project, a social science back-up center affiliated with the Bureau of Social Science Research here in Washington, worked for senior citizens clubs represented by legal services attorneys in North Carolina in a challenge to the rate structure of the Duke Power Company. The social scientists of the Legal Action Support Project collected data and determined that the increase in rates that was proposed would be paid out of the food money of older North Carolinians. An expert from the Legal Action Support Project testified before the North Carolina Power Commission, and the increase was refused.

The National Housing and Economic Development Project and the Department of Housing and Urban Development negotiated a model lease and grievance procedure for federally subsidized public housing throughout the country, the adoption of which has resulted in vindication of client rights throughout the country. Previously most of these matters would have been resolved through litigation, or not at all.

Back-up centers are also uniquely situated to comment on the legality of proposed regulations and their impact on poor. As a result, back-up centers generally follow the Federal Register, advise local programs of significant proposed regulations, and submit comments based upon client problems and experience. Thus, for example, the National Consumer Law Center files comments on proposed regulations by the Federal Trade Commission and the Federal Reserve Board, and has also had suggestions adopted by the Commissioner on Bankruptcy Laws. My center comments on regulations proposed by HEW and the Department of Labor, and we know of instances in which proposals that would clearly have harmed our clients have been abandoned as the result of the comments we have made.

7. *Legislative Advocacy.*—Often the best, if not the only solution to a client's problem, or, on the other hand, the greatest threat to the client's well-being, is found in proposed legislation. There is rarely anyone other than the legal services program who can present the views and needs of the client to the legislature. The back-up centers have assisted local programs in this important area in a number of ways. They have developed the capability of following developments in Congress and state legislatures so that they can report to local programs on matters that may affect their clients. They are frequently the only place where legislative staff may obtain information on the effect of proposed or existing legislation on the poor. They are also able to develop legislative solutions to client problems. The National Consumer Law Center, for example, has drafted the National Consumer Act which has been adopted by the State of Wisconsin, and the Model Consumer Credit Act, an alternative to the Uniform Consumer Credit Act.

8. *Training.*—Most of the back-up centers have provided training to legal services lawyers from time to time, and some include training in their on-going programs. Nevertheless, the need for centers expert in training techniques and theory was recognized a number of years ago, and the Legal Services Training Program and the National Paralegal Institute were established. Both of these programs have been offering training for several years, and have been extremely well-received by the lawyers and paralegals who have completed the training cycle. Each training session takes several days, and involves the use of specialized techniques of training (such as video-tape and role-playing) and

small groups to assure the greatest individual attention. Training has covered basic skills for new lawyers and new paralegals, substantive areas of concern, such as welfare, housing, and consumer matters, and skills of management for project directors. Back-up center personnel are drawn on heavily to prepare the training materials and to serve as trainers.

9. *Clearinghouse.*—The National Clearinghouse for Legal Services is the back-up center that obtains and catalogues all significant papers in cases in which legal services programs are involved, and publicizes those papers through its monthly magazine, the Clearinghouse Review. Again, this is an absolutely vital service which the legal services program had to develop for itself, and which is now by all accounts being provided in an outstanding manner by an independent back-up center.

In sum, the back-up centers perform a wide range of functions which are necessary to a program seeking to provide comprehensive and professional services to its clients. More importantly, they have delivered these services extremely well. The quality of service provided is made clear in the most recent evaluations of the centers, conducted in 1973. Individuals in the United States Office of Economic Opportunity who had set out to destroy the centers ordered a full set of evaluations to arm themselves, they thought, with the ammunition to close the centers. Teams of law professors, private lawyers, management experts, and others, examined the centers, and concluded almost unanimously that the back-up centers were providing the full range of services described above in an exemplary manner.

There are many factors that have enabled the back-up centers to deliver so many services so effectively: their specialization and national perspective, their multi-functional approach, their independence, the credibility they have achieved among legal services lawyers and the client community, and the congenial working conditions they are able to offer top-flight lawyers and other professionals. Since it will be impossible for the centers to retain all of these attributes unless the amendment contained in H.R. 7005 is passed, it is necessary to discuss some of these factors in greater detail.

a. *Specialization and national perspective.*—As I have said before, the areas of law which uniquely affect poor people have turned out to be far more complex than most people had anticipated. As in all other areas of law governed by complex statutes and supervising regulatory agencies, adequate representation requires specialization. In addition, much of the complex law governing the ability of the poor to obtain food, clothing, and shelter is affected by developments at the federal level, or by "uniform" state laws or trends in decision and legislation, so that a national perspective is invaluable. The Legal Services Corporation Act does not bar specialization or a national perspective *per se* in the new legal services program. It is the other restrictions on the corporation, however, that will deprive the program of the full benefit of specialization and national perspective, and I turn to those matters now.

b. *Multi-functional approach.*—The back-up centers, particularly the substantive, or advocacy centers, have been effective in large part because they have been able to serve legal services lawyers and clients in such a variety of ways, and have therefore been able to determine the most effective approach to each problem. They have been able to litigate where that appeared to be most appropriate, or to deal with an administrative agency if it seemed that a policy could be changed without litigation. They have been able to advise all legal services lawyers of effective means of action, or to train lawyers if that seemed most likely to assure protection of client rights. The experts in a specific area have therefore been available for the most important work in that area at any particular time, whether or not representation was involved.

As the result of this multi-functional approach, the legal services program has received the full benefit of the skills of well-qualified lawyers, and has been able to attract top-flight talent because of the opportunity offered. This has made available to local legal services lawyers the advice and assistance of able and creative persons who can speak from current experience because they are advocates currently involved in representation themselves. The last thing a harried legal services lawyer needs is theoretical advice from a non-practicing attorney about how to handle a matter in litigation or how to represent a client more effectively through means other than litigation.

c. *Independence.*—The back-up centers have always been independent grantees, not a part of the central administration of the legal services program, and this independence has been absolutely critical to the effectiveness of the centers. For back-up centers representing clients, independence is necessary to avoid conflicts

of interest and the possibility of undue influence on representation. This principle has been recognized in the 1974 Act, which precludes the corporation from providing direct client representation itself.

Independence is crucial for the non-advocacy centers as well. Much of the successful training and management assistance that has been provided depends upon the trainees' candid assessments of their own weaknesses and the weaknesses of their programs. Such candor cannot be expected if the training or assistance is being provided by the funding agency itself.

Even where independence may not be essential, as in the clearinghouse function, or in giving advice not directly related to advocacy, independence has encouraged a creativity and willingness to innovate that has inured to the benefit of the program and has not produced any ill effects. Independence also permits the centers to obtain additional funds from other governmental and private sources, and a number have succeeded. Furthermore, a number of the centers have the advantage of sponsorship by Universities or other entities with libraries and professional staff available for consultation.

Independence does not mean that the back-up center is not accountable to its funding source. The Office of Economic Opportunity placed special conditions on grants where problems were perceived. Programs were evaluated, and asked to cure deficiencies. Work programs had to be included in all funding proposals. Restraints of this sort will continue to be placed on all grantees, and are consistent with independence in the conduct of day-to-day activities.

d. *Credibility.*—Over the past nine years the back-up centers have won the confidence of the lawyers and clients of the program by proving that they are totally committed to the full professional representation of the client and are not abstract think-tanks concerned with pursuing their own theories. This trust has caused lawyers and clients to accept advice that may be bitter—such as that a case should be abandoned as hopeless even though a client is suffering gravely—and has encouraged lawyers to call upon the back-up center to take over major responsibility for difficult cases. Similarly this trust is essential to the candor needed in training and self-analysis as discussed above. Such intangibles are not easily transferred to new institutions, and the corporation should be free to determine whether it is in the best interest of the program, and the clients of the program, to maintain existing programs.

e. *Congeniality of working arrangements.*—Even with the total uncertainty that has surrounded the future of the back-up centers for the past two-and-a-half years, they have proven to be very exciting places for lawyers and other professionals to work. Since each center is small, there is great camaraderie. The freedom to select the best course for dealing with each problem assures full use of the talents of each member of the staff. These attractions are essential, because the back-up centers, like the local legal services programs, cannot compete for legal and other professional talent on the basis of salaries and fringe benefits, nor has the future of the centers been so secure that they appear to offer a career.

Much of the effective work of the centers cannot continue under the Legal Services Corporation Act of 1974 in its current form. The original Administration bill would have permitted a full range of back-up center activity, but when the bill reached the House floor in 1973 there was concern expressed by some members that the centers were not engaged in client related activities, but were social theorists who should not be using the funds made available to provide services to clients. The result was the deletion of authority for the conduct of research, training, technical assistance and clearinghouse activities by grant or contract.

The House restriction on back-up center activity was not accepted by the Senate. The Conference Committee reported out a compromise that would have permitted the Centers to continue to function offering their full array of services, while the corporation studied the centers and reported back to the Congress. This compromise was accepted by the House.

Impeachment proceedings were quite advanced at this point, and certain hard-core supporters of the President called for a veto of the legal services bill. The White House responded that President Nixon would veto the legal services bill, which was essentially his own bill, unless the House restriction on back-up centers was substituted for the Conference Committee Compromise. The supporters of the legal services program agreed reluctantly, expressing their understanding that the restrictions on back-up activity would not necessarily result in the existing centers being closed, although it would substantially limit their activities.

This amendment to the Act will have a profound and irrational impact on the current program. The sponsors of the legislation indicated that under the White House imposed provision representation of clients will continue to be a function provided solely by national or local grantees or contractors, since the corporation is barred from litigating on behalf of clients, but that research, training, technical assistance and clearinghouse functions, to the extent they relate to the delivery of legal assistance and not simply to management or advocacy skills, may be performed only by the corporation itself. Such forced bifurcations of activities will severely undermine the effectiveness of the programs that have been developed.

The Board of Directors of the Legal Services Corporation has asked its staff to undertake a study of how under the existing legislation the Corporation may best provide the types of services now offered by the back-up centers. At its meeting earlier this month the Board of Directors of the Legal Services Corporation determined that it would take until the end of June 1976 to complete its study of the back-up center situation and take action based upon that study. When the appropriate studies are completed, and the Board of the Legal Services Corporation has had full opportunity to consider those studies, I am confident that the Board will conclude that independent, multi-functional back-up centers are essential for provision of full professional services to the clients of the legal services program, and that the large investment of expertise and trust in the current centers will warrant retention of those centers if at all possible. The Corporation will then need a change in the law, and I would expect that they will come to this Committee seeking such a change.

Unfortunately, each back-up center is now operating on its final grant under the pre-existing authority, and those grants only run through March 1976. It is therefore our position that Congress should act now to restore the authority that has existed in the program until now, so that the Board of the Legal Services Corporation may keep the centers alive until it has time to make whatever decision it determines is best in the interests of the clients of the program.

If speedy action is not taken, there is a great likelihood that the back-up centers, at least as we know them, will be destroyed. Professional staff has held on through all this uncertainty, but we cannot expect everyone to stay right through March unless there is substantial encouragement, to say the least. Long term projects—such as preparation of manuals or commencement of major litigation—cannot be undertaken. Admittedly, we will face uncertainty in the next few months even if the legislation is passed, for the Corporation will be deciding what funding action to take. But we are confident that, together with the local programs and the clients, we can convince the Corporation of our merit, if we are only given a chance.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. Now, Mr. Lanigan, we will hear from you. You have a somewhat shorter statement, hopefully.

Mr. LANIGAN. Yes.

Mr. KASTENMEIER. If you want to read it in full, you may do so.

Mr. LANIGAN. What I would like to do, with your permission, is submit my statement for the record and read about 10 minutes' worth of it that I think is particularly—

Mr. KASTENMEIER. I think—it is only six and a half pages long. If you read it, it would take 10 minutes. So proceed either way.

Mr. LANIGAN. Probably less than 10 minutes. I have cut considerable out of it. But I will start in.

My name is James A. Lanigan. I am the directing attorney of the Washington office of the National Senior Citizens Law Center. The NSCLC is what has been known as a legal services backup center and specializes in legal problems of the elderly poor. We are sponsored by the University of Southern California and have been financed by the Office of Economic Opportunity and currently by the Community Services Administration.

I want to give you an idea of what particular legal services the center gives and how it operates and what effect it has, and I will con-

tinue in that vein. I will not attempt to give you a long lecture on the problems of our elderly citizens. Suffice to say the aging constitute a large and growing segment of the population. There are over 40 million men and women in the country over the age of 55, of whom 21 million are over 65. This 40 million constitutes about 20 percent of the Nation's population and 30 percent of the adult population. While those over 65 comprise about 10 percent of the population, they account for 20 percent of the poor. Nearly 50 percent of all blacks 65 and over live on incomes below the poverty level.

Our experience demonstrates beyond doubt that these people have both special problems of their own and the normal problems of living in an aggravated form. Income maintenance, transportation, health, food, and housing are literally matters of life and death to the elderly.

A few years ago, surveys indicated that only about 6 percent of the Legal Services offices' clients were elderly, whereas 20 percent of the poor were elderly. Thus, the number of elderly legal service clients constituted only about 30 percent of what should be expected.

NSCLC has acted vigorously to improve the delivery of legal services to the elderly poor. In 1974 and early 1975, over 750 attorneys were trained in relevant substantive areas of the law and in such practical problems as organizing law offices to serve the elderly. Training sessions were held in 10 regions throughout the country and also in New Orleans and Los Angeles. Several hundred pages of instructional material were distributed to participants and to others throughout the country, including this subcommittee.

We published several handbooks and other types of articles which I have listed in the statement.

The Washington office of the NSCLC issues a highly popular weekly newsletter which covers Federal legislation and regulatory developments in areas of interest to the elderly, as well as notices of congressional and executive branch committee meetings and the like. Our main office issues a periodic newsletter concerned with recent and significant legal developments. A copy of a recent issue of each is attached to the principal statement I will file.

We have drafted or participated in drafting and have prepared reports on legislation in various fields, including private pension plans, condominium development, SSI, guardianship and involuntary commitment, Older Americans Act amendments, and State-funded legal services programs for the elderly.

We often comment on proposed regulations, and we monitor regulations for consistency with statutory requirements and for adequacy and reasonableness.

Through all this activity, NSCLC has sensitized Legal Services attorneys to the problems of the elderly poor and to the availability of NSCLC as a resource. We receive and respond to numerous requests from these attorneys for assistance in particular legal problems and actions involving the elderly.

Just yesterday afternoon, I received the activities report of our organization for the first 6 months; and with the committee's permission, I would like to put this in the record. It illustrates that we cover problems in areas ranging from Hawaii to Maine and from Florida to the State of Washington, and we participate—we help in many different ways that are stated in the report.

[The material referred to follows:]

ACTIVITY REPORT—NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES AND WASHINGTON, D.C., JANUARY 1 TO JUNE 30, 1975

The goal of the National Senior Citizens Law Center is to increase the delivery of effective legal assistance to the nation's elderly, with particular emphasis on sensitizing, training and helping local Legal Services programs and State and Area Agencies on Aging in the accomplishment of this goal.

The following report to the Community Services Administration is in compliance with Special Condition No. 4 to NSCLC's grant for program year July 1, 1974 to June 30, 1975. Activities of NSCLC for this part of the program year are cataloged by kind of activity, and only highlights are presented in the outline form. Further amplification in any area will be furnished upon request.

I. MAILINGS

A. Late last fall we distributed copies of the Social Security Administration's procedures for replacing missing and lost SSI checks to each Legal Services office in the country. As a follow up to that distribution we have asked Legal Services attorneys to provide us with instances in which these procedures have not yielded prompt replacement checks to their clients. We have in turn provided descriptions of these instances to Nick DiMichael, Office of the Aged in the Bureau of SSI, who is working with us to produce a more efficient system for replacing checks.

B. Though all Legal Services attorneys now subscribe to the SSI portions of the Social Security Claims Manual and the Disability Insurance Letters, they do not have access to the SSI Handbook which is still used by Social Security district offices to resolve some SSI issues and therefore contains transmittals of interest and importance to Legal Services attorneys. We have secured copies of the Handbook transmittals dealing with recoupment of SSI overpayments and replacement of missing checks and have distributed them to interested Legal Services attorneys.

C. In connection with *Hannington v. Weinberger*, the disability rollback case discussed in the litigation section of the report below, we spent a substantial amount of time during the first part of the year coordinating the efforts of the approximately 25 Legal Services attorneys around the country working on roll back cases. This involved production and distribution of a status report on all the cases and dissemination to all rollback attorneys of our own *Hannington* pleadings.

D. The Washington Office began sending out a Weekly Washington Newsletter on March 28, 1975, covering Federal legislative and regulatory developments of interest to the elderly. This has been issued weekly since its inception and is mailed to about 450 organizations and persons, including all the Legal Services offices which receive Older Americans Act funds.

E. Contacts have been repeatedly initiated by NSCLC with the 800 Legal Services branch offices throughout the country for the purpose of informing them of sources of federal funding available to initiate or expand legal services to the elderly. Between January and June, 1975, NSCLC disseminated information on sources such as Social Security Act Title XX, Older Americans Act Title III and CETA.

F. In cooperation with AOA, we sent information to some 800 Legal Services projects around the country regarding Model Projects funding.

G. NSCLC's quarterly newsletter is mailed to approximately 1200 offices, groups and persons.

II. TRAINING

A. Attended the Project Directors Training Conference (PAG Conf.) for Region IX of OEO Legal Services on April 24, 1975 to explain the technicalities of funding for legal services under the Older Americans Act, the proposed new Title VIII of that Act and Title XX of the Social Security Act.

B. NSCLC co-sponsored with AOA and coordinated a national conference entitled, "Law and the Elderly," held in Los Angeles, January 17-19, 1975 for all Legal Services projects around the country dealing with the elderly. The panelists and participants included many individuals prominent in the field of Aging and legal services for the elderly from all over the United States. NSCLC

staff participated extensively in this conference and prepared appropriate materials.

III. ARTICLES

A. Prepared the following articles for the NSCLC Newsletters

1. *Age Discrimination—Mandatory Retirement.*—Discusses recent U.S. Supreme Court actions relative to appeals from lower court's ruling upon the issue of whether public employees may, consistent with the Constitution, be subjected to mandatory retirement policies.

2. *Housing—Utility Terminations.*—Discusses current status of the law involving the issue of whether public utilities, in terminating service for non-payment of bills, are imbued with state action and subject to due process strictures.

3. *Consumer—Prescription Drug Price Advertising.*—Discusses current status of the law involving the issue of whether statutes prohibiting prescription drug price advertising are constitutional.

4. *Age Discrimination.*—"The Age Discrimination in Employment Act Revisited"—surveys the Federal Age Discrimination in Employment Act of 1967 as affected by recent decisions.

5. Nursing home patient's bill of rights.

6. *Funding.*—Funds for the Expansion of Legal Services Are Available Under Title XX of the Social Security Act.

7. *Current Cases.*—*McGrath v. Weinberger*, a case challenging procedure for appointment of representative payee under the Social Security Act.

8. Article about the impact of the Freedom of Information amendments of 1974 on the SSI and Title II programs. This article appeared in our newsletter and has also been submitted to Dick Brown who handles most Freedom of Information and privacy matters for the Social Security Administration. After Dick has had a chance to review the article and provide a written summary of his comments, we hope to revise it for *Clearinghouse Review* publication.

9. Numerous short articles for the Washington newsletter.

10. Prepared a short article on Washington office activities for the regular NSCLC March, 1975 Newsletter.

B. Other articles

1. Article on protective services for the elderly will appear in the summer issue of the Missouri Law Review and will be distributed toward the end of July. This article, as well as serving as a current statement of the state of the law with regard to protective services for the elderly for concerned attorneys will also hopefully stimulate interest by the private bar and by other concerned groups toward the plight of elderly persons faced with involuntarily imposed protective services yet who must confront judicially imposed declarations of mental incompetency absent the kind of procedural safeguards which would assure them a fair hearing.

2. Prepared an article for the Arizona Law Review entitled "Legal Services for the Elderly."

C. Training materials and manuals, etc.

1. Prepared and gathered extensive materials on legal problems of the elderly as part of the package of materials distributed to attorneys who attended the January training conference, and now available for purchase by others. (NSCLC received a special \$5,000 grant to defer printing expenses for CSA Legal Services projects). With regard to those printed materials, we are currently providing approximately 25 different articles, papers, manuals, publications, etc. of which we have made approximately 4,000 copies available to Legal Services programs and agencies working in the field of elderly problems.

2. We have processed 710 subscriptions (for the SSI portion of the Social Security Manual & SSA Disability Insurance Letters [DILS letters]) of which 321 are being provided free, and the balance are assessed a nominal annual subscription fee, which is charged to offset the printing costs HEW charges NSCLC for subscriptions in excess of the 300 they agreed to provide free. The SSI materials have been available for approximately 18 months and Bruce Miller, Staff Attorney at NSCLC, recently successfully negotiated for the release of the DILS letters, which were sent to all SSI subscribers and which will now be a regular part of that subscription.

IV. TECHNICAL ASSISTANCE

A. Legal Services Programs

Nearly all of our technical assistance to Legal Services programs is provided letters outlining possible approaches to a client's claim, to detailed strategy con- in the form of responses to telephone and letter requests for information, con- sultation, background materials, pleadings or some combination thereof.

1. *Income Maintenance* (SSI, Social Security, Pensions).—In the private pen- sion, SSI and Social Security areas, we reply to an average of about 50 inquiries per month. Our responses range from a brief answer to a question over the tele- phone, to sending copies of pleadings from our library or our own cases, to longer ferences over the telephone or, with respect to local matters, in person.

Some of the more interesting matters on which we have provided technical assistance in the last six months are the following:

a. We have consulted extensively with David Arnold and Wayne Pressel of the statewide program in Georgia who have brought a statewide class action challeng- ing the rule in the SSI program which treats couples who have split up as still together, for purposes of grant level and sharing of income, for the first six months they are apart. Since we, along with the Western Center on Law and Poverty, have a similar case pending in the U.S. District Court for the District of Columbia, we were able to provide Wayne and David with extensive pleadings and to share with them in the formulation of a strategy for both cases.

b. In the pension area three new cases have been prepared or filed in the past six months which are modeled on our case against the construction laborers pen- sion fund, *Harrison v. Crowell*. They involve, respectively, a challenge to the eligibility conditions for benefits provided by the Pension Fund for the Western Conference of Teamsters brought by the CRLA Senior Citizens office in San Fran- cisco on behalf of a class of Chicano and women retirees; a suit challenging the number of hours required for a full year of credited service brought by the Appa- lachian Research and Development Fund on behalf of a class of retired members of the United Mine Workers Union; and a suit almost identical to *Harrison* brought against the Construction Pension Plan for San Diego by attorneys for the San Diego Legal Air Foundation. We have consulted extensively with the attorneys preparing all three suits and supplied them with extensive pleadings and memoranda.

c. In the Social Security area we have helped an attorney for the Zuni Legal Aid Society find a way to prove self employment income for purposes of insured status on behalf of an elderly Indian client who was unaware of his obligation to make Social Security contributions while he was self employed.

d. Also in Social Security, we advised an attorney with the Marion-Polk Legal Aid Service in Salem, Oregon on ways he might use the Freedom of Information amendments of 1974 to secure copies of the payment worksheet prepared on his client by the Social Security Administration. The payment worksheet was offered in our article on amendments, described above, as a paradigm of this sort of record which should now be easily obtainable. Not surprisingly, SSA does not agree and the result may be an early test of the amendments' liberal provision for judicial review of agency denials and delays in providing covered information and documents.

e. Jane Stevens of Chicago Legal Assistance Foundation asked for research and technical assistance with respect to a Title II representative payee problem. The problem involved the recoupment of overpayments made solely because of the Social Security Administration's error and not due to any failure to report on the part of the representative payee. We conducted an investigation of the relevant case law and regulations, and sent to her a memo briefing the question, complete with a copy of a Social Security ruling directly on point.

f. Again, several inquiries dealing with delayed and missing checks, delays in the application process and hearing delays.

g. Applicability of SSI mandatory supplementation requirements to situation where certain special needs were considered to be "services" rather than part of the cash grant (Greater Lansing Legal Aid Bureau, Inc., Lansing, Mich.).

h. Opinion on the constitutionality of paying a reduced grant to an aged recip- ient to reflect in-kind income in the form of housing from a relative where if the recipient owned the house himself, he would have exactly the same housing expenses, but would get a full grant. (The question goes to the heart of one of

the basic features of the system, that a grant is computed without regard to the particular individualized living arrangements of the recipient, and is evidence of what seems to be a trend of dissatisfaction with it.) (Legal Aid Society of Topeka, Inc., Topeka, Kansas.)

i. Opinion as to the constitutionality of the SSI provision which makes veterans benefits based on non-service connected disabilities totally unexcludable in contrast to Social Security Title II benefits and veterans benefits based on service connected disabilities which are at least subject to the \$20.00 per month any income exclusion. (The question was raised in this particular case by an Administrative Law Judge—interesting since it is not the kind of question an Administrative Law Judge is “supposed” to decide.) (Eastern Washington Legal Paraprofessional Unit, Spokane, Wash.)

j. Applicability of the six-month rule to a couple where one member is institutionalized. (New Mexico Rural Legal Services, Las Vegas, New Mexico.)

k. Information on special grandfathering provisions for the blind. (Community Legal Services, Philadelphia, Pa.)

l. Information on the SSI resource rule pursuant to which the value of a home owned by the applicant and her sister as tenants-in-common was wholly attributed to the applicant; the attorney made a state property law argument at the hearing. (Middlesex Co. Legal Services Corps., Perth Amboy, N.J.)

m. Applicability of SSI grandfathering provisions to an individual who had a favorable state fair hearing decision post-January 1974, subsequent to the denial of a separate SSI application. (Pine Tree Legal Assistance, Portland, Maine.)

n. Solicitation of views on various SSI legislative proposals—probably motivated by receipt of our comments on the Taft Bill. (SSI Center, Boston, Mass.)

o. AFDC eligibility of a mother whose only child is an SSI recipient—mother was being paid, and amount of AFDC money was in dispute, but it appeared that there may in fact have been no AFDC eligibility at all. (Legal Services Center, Seattle, Wash.)

p. A theoretical question on the relationship of Title II and Title XVI—assuming a non-grandfathered SSI disability recipient whose Title II disability application was turned down. An Administrative Law Judge raised the question and suggested that a loss of a Title II claim at the hearing stage would amount to a revocation of the SSI eligibility. (This appears to be entirely wrong and the situation should never arise at all.) (Legal Aid Society of Wichita, Inc., Wichita, Kansas.)

q. Applicability of the one-third reduction rule to an SSI recipient who is legally incompetent and who lives in rented housing with a relative. (Maricopa Co. Legal Services, Phoenix, Arizona.)

r. Whether grandchildren drawing dependent's benefits on the wage record of the grandfather could be taken out of payment status to avoid the effect of the family maximum where the grandchildren were subsequently adopted by someone else. (The answer, surprisingly enough, was no.) (Northeast Kentucky Legal Services, Inc., Grayson, Kentucky.)

s. Whether advance notice and a prior hearing had to be afforded before benefits could be terminated due to alleged cessation of disability. (*Edridge v. Weinberger* is not a class action.) (Charlottesville-Albemarle Legal Aid Society, Charlottesville, Virginia.)

t. Opinion as to the validity of the specially stringent definition of disability for women claiming as disabled widows, and information as to the Title II standards for a waiver of recoupment. (Legal Aid Society of Wichita, Inc., Wichita, Kansas)

u. Opinions as to validity of imposition of actuarial reduction on a disability benefit because of prior receipt of a widow's benefit. (Memphis and Shelby County Legal Services, Memphis, Tennessee.)

v. Information on proof-of-age regulations. (California Indian Legal Services, Escondido, Calif.)

w. Right of claimant to have Administrative Law Judge issue subpoena for claimant's own medical records. (Georgia Legal Services Program, Augusta, Georgia.)

x. Legislative reasons for and opinions as to validity of requirement that onset of disability be within seven years of spouse's death in order to qualify for benefits as a disabled widow. (Monroe Co. Legal Assistance Corp.—Southern Tier Legal Services, Corning, N.Y.)

2. *Health*.—a. Advice to Community Legal Assistance Center concerning Medicare coverage problem.

b. Assisted George Hacker of Denver Legal Aid with questions involving deeming of spousal income to determine Medicaid eligibility of nursing home patients.

c. Assisted Paul Lichterman of Cambridge Somerville Legal Services with question concerning the legitimacy under state and federal law of the imposition by a nursing home of charges for personal laundry service on Medicaid patients.

d. Assisted Legal Services program in Rome, Georgia, on issues arising out of deeming of spousal income in determining Medicaid eligibility for nursing home patients.

e. Responded to inquiry from On-Board Legal Services, New Bedford, Massachusetts for information about nursing homes.

f. Technical assistance to Rosemary Simon of Greater Lansing Legal Aid Bureau, Inc. Wrote opinion letter concerning compliance of state with federal requirement that transportation be provided to Medicaid recipients.

g. Continued to provide assistance to William Griff of the Legal Aid Society of Westchester County with respect to his application for Medicaid and SSI benefits based on obtaining approval for a plan of self-support for a disabled person.

h. Obtained information about model nursing homes for Elaina Ackel of the Community Legal Assistance Center.

i. Responded to request for copies of federal statutes and regulations pertaining to nursing homes from William Howell of the Legal Aid Bureau of Pulaski County, Arkansas.

j. Responded to request for copies of federal statutes and regulations pertaining to nursing homes from Mr. Pecora of the Legal Services for the Elderly in Baltimore, Md.

k. Assisted Barbara Dudley of CRLA Senior Citizens Program in San Francisco with both the federal and state displaced homemakers bills.

l. Provided technical assistance to Joyce Holsey of the Legal Aid Society of the Pima County Bar Association with a question concerning the medical legitimacy of certain physician services rendered to her client.

m. Assisted Joseph Dailing, Legal Aid Services of Rock Island County, with questions concerning constitutionality of Medicare Part B hearing and appeal rights.

n. Responded to request from Leslie A. Nixon of the Maricopa County Legal Aid Society with respect to her questions concerning a senior citizens medical center in Phoenix, Arizona.

o. Responded to request for information from Richard McCarthy of Fairfield County Legal Services, Inc., with respect to legislative basis for exclusion from Social Security income in determining eligibility for Medicaid.

p. Responded to request from Bob Mapes of Ohio State Legal Services Association for information about Medicare coverage of Part A claims.

q. Responded to request for assistance from Valerie M. Therrien, law student with Pine Tree Legal Assistance, Inc., concerning the denial of Medicare and/or Medicaid coverage for acupuncture treatments.

r. Responded to request from Ellen Montavo of the Maricopa County Legal Aid Society for a copy of the California Nursing Home Citation System Statute.

s. Responded to request from A. Randolph Bragg of the Pennsylvania Legal Services Center in Harrisburg for a copy of the California Nursing Home Citation System Statute.

3. *Probate, Guardianship.*—Bob Guttman of Florida Legal Services, Inc., sent a draft of some legislation which Florida Legal Services will introduce in the Florida legislature to revise the guardianship and conservatorship procedure in Florida. We provided him with a detailed analysis and comments on the legislation, and sent him some suggestions for improvement. Pursuant to his additional request, we also forwarded to him a copy of the *Legal Services Guidebook on California Estate Planning and Administration for Senior Citizens*, as he indicated a desire to adapt it for use in Florida.

4. *Expansion of Legal Services to Elderly.*—a. Responded to various written and telephone requests for materials and assistance in setting up and funding legal services offices.

b. R. Bradley Wolfe of Neighborhood Legal Services, Inc., in Hartford, Conn., wrote to ask our assistance in researching and resolving a problem involving the question of whether a legal services program could conduct legislative advocacy

on behalf of seniors when part of its funds come from the Legal Services Corporation and part from the Administration on Aging. We formulated a legal memorandum on the question which was subsequently sent to the Hartford program.

c. We have continued to provide research and technical assistance to Legal Services programs across the country who wish to initiate or expand services to the elderly poor and wish to obtain the available federal funding therefore. Although much of our assistance in this regard has centered around Title III, § 304 of the Older Americans Act, and information about the new Title XX of the Social Security Act which becomes effective October 1, 1975, in the immediately recent past we have done a great deal of technical assistance with regard to informing and advising Legal Services programs across the country about the current availability of funding under Title III, § 308 of the Older Americans Act (funding for model projects).

5. *Age Discrimination*.—Various routine requests for information on Age Discrimination were received from Legal Services programs, law students and private individuals. Appropriate responses, depending upon the nature and the source of the requests were made.

6. *Washington Assistance*.—Handled over 35 requests for information and assistance on legislative, regulatory and other matters from Legal Services offices throughout the country. We find that the Weekly Newsletter is stimulating such requests to the Washington office.

B. Other agencies and programs

1. *Income Maintenance (SSI, Soc. Sec., Pensions)*.—a. The legal advisor to the Governor of California asked for our recommendations as to possible programs the Governor might institute in the private pension field. Private pension activities by the states are, of course, seriously constricted by the language in the Federal Reform Act pre-empting state laws which may affect plans it covers. Nevertheless, we believe the state could, within this language, establish an advocacy office empowered to advise and represent retired Californians whose claims for pension benefits had been denied. We provided an outline of such a proposal to the Governor's legal advisor, as well as a memorandum describing how and where such an office could be established under existing law.

b. Betty Brown, Montgomery County (Md.) Commission on Aging, Re: rights of past and present employees regarding supplemental pensions provided by Railway Express Agency.

c. A very interesting inquiry from the New York Employment Law Project—whether it is constitutional for a state to reduce unemployment compensation benefits to reflect receipt of Title II retirement benefits. Since the client is over the age of 72, there is an argument that this practice undercuts the policy of Title II to the extent that unemployment compensation is a substitute for wages in that wages earned by a recipient over the age of 72 are not subject to the excess earnings test. If this develops into litigation, they will contact us again.

d. Advice on how to handle a Title II representative payee problem—the representative payee had misappropriated the benefits and general information on the Freedom of Information Act amendments vis-a-vis obtaining Title II files. (A private attorney in Los Angeles.)

e. Information on the litigation history of the Retirement Test. (A private attorney in Florida referred to us by the ACLU.)

f. General information on SSI state supplementation, grandfathering and hold harmless (Area Office on Aging, Akron, Ohio).

g. Availability of legal services for Title II disability claimants (a social worker at Barlow Hospital referred to this program by the Health Law Project).

2. *Health*.—a. Piroška Soos, Esq., Consumer Protection Division, Mass. Atty. General's Office, Re: Senate Special Committee on Aging, Subcommittee on Long-term Care, Nursing Home Reports.

b. Maxine Roecker, Washington State Office on Aging, Re: Nursing Home and Home Health Legislation.

c. Ellen Zahn, Little Sisters of the Poor; Re: loss of SSI supplement when transferred to nursing home.

d. Margaret Speck, Portland State Univ. Institute on Aging, Re: testimony on alternatives to long-term care, home health services, before the Subcommittee on Health Maintenance and Long-Term Care, House Select Committee on Aging.

f. Assisted Los Angeles based coalition of persons interested in Medicaid coverage of mental health services provided on an out-patient basis in clinical settings.

g. Assisted Deborah Newquist, Planning Unit, Department of Citizens Affairs of Los Angeles County, in preparing discussion of innovation in delivery of nursing home care.

h. Assisted the Massachusetts Attorney General's Office with respect to its preparation of nursing home regulations.

i. Discussed various considerations in examining alternatives to nursing home care with Noreen Pedrick of the Stanford Research Institution.

j. Prepared letter of comment and review of the "Citizens Action Guide: Nursing Home Reform" publication prepared by the Gray Panthers Long-Term Care Action project for the assistance of that project.

k. Responded to request from Daniel Hilford, District Attorney of San Luis Obispo County for materials pertaining to nursing home regulation in connection with a grand jury investigation being conducted in that county.

l. Technical assistance to Michael Towne, Hawaii Legal Services project, concerning medical malpractice against an elderly client.

m. Assisted Donna P. Solomon of the American Jewish Congress in San Francisco by providing her with materials pertaining to nursing homes and remedies for conditions therein.

n. Responded to request from Marie McGurie Thompson for a copy of the California Community Care facilities act of 1973.

3. *Probate, Guardianship.*—Ujevich, Library of Congress, Re: States using age as a statutory definition of mental incompetence.

4. *Housing.*—Sarah Kaltenborn, Esq., Housing Section of Civil Rights Division, U.S. Dept. of Justice, Re: State laws discrimination against women in violation of the Fair Housing Law of 1968.

5. *Older Women.*—a. Barbara Resnick, Associates, Washington, D.C., Re: Outline of "Legal Issues Affecting Older Women," for use in setting up a conference on the problems of all women in conjunction with Mt. Vernon College.

b. Prepared a description of the sections of the Older Americans Act under which funds might be available for projects benefiting older women. The resulting memorandum was distributed to Tish Sommers of the NOW Task Force on Older Women, to the Women's Litigation Unit of San Francisco Neighborhood Legal Services, to Barbara Dudley of the Jobs for Older Women project.

c. Assisted the local chapter of the National Organization of Women (NOW) in preparing an information-gathering form concerning the incidence of job discrimination against older women and the availability of assistance for those who have suffered such discrimination from governmental agencies and the private bar.

6. *Expansion of Legal Services to Elderly.*—a. We have provided technical assistance in the form of research and information on funding opportunities for legal services to the elderly to a consortium of educational groups in the Southern California area loosely labeled the Ad Hoc Educational Committee on Aging. Toward this end we have provided specific funding information under the Older Americans Act to the Los Angeles County Community College District. Los Angeles City College currently provides a multipurpose senior center which is funded with a combination of CETA and county tax money. They also employ an attorney to teach a course to the elderly on legal problems of the elderly. The thrust of the course is to advise the elderly about their rights and remedies under the Social Security Act, Medicare, etc. They wish to expand the purposes of their multipurpose senior center to include a broader definition of legal services for the elderly, and to integrate their legal aid program to the younger students with one for the elderly. Toward this end, we have supplied them with appropriate funding information on possible sources of appropriate federal funds.

b. In April, Bruce Miller, Staff Attorney at NSCLC, was interviewed by the Aging Commissioner's office for the State of Nebraska on the subject of legal services for the elderly. The interview formed part of the basis of an article in the Commission's monthly magazine which appeared in May.

c. Responded to requests for various materials regarding the legal problems of the elderly, our functions in this regard and lists of projects across the country funded specifically to deal with the problems of the elderly. Continued to act as a liaison between agencies serving the elderly and Legal Services programs assisting the elderly.

d. On June 21, 1975 we participated in a conference in Chicago of the American Bar Association Young Lawyers Section dealing with delivery of legal services. They desire to enter the field of delivery of legal services to the elderly and desire to rely heavily upon the work already done by the NSCLC. We agreed to provide

them with the fruits of our efforts in the area of both funding and of substantive legal problems.

7. *Age Discrimination*.—Charles Homes and Joy Rabin, National Council on Aging, Re: legislation regarding age discrimination.

8. *Washington Assistance*.—Handled numerous requests for information regarding legislation or regulations in Washington from non-legal services offices and individuals.

9. *Miscellaneous*.—a. Dan Schulder, Pa. Governor's office, Re: coordination of Title XX programs for the elderly with programs funded the Older Americans Act and the difficulty caused by the means test in Title XX.

b. Herbert M. Golden, NYC, Office on Aging, Re: who to contact at various House Committees to arrange to testify.

c. Joan Ainsburg, Pa. Governor's Office, Re: Maryland Part-Time Opportunity Act.

d. John G. Hutchinson Community Services Administration, Re: information regarding Title XX of the Social Security Act.

IV. LITIGATION ASSISTANCE

A. *Case: Shaw v. Weinberger*, Federal District Court, North Carolina, No. C-74-105.

Issue: Validity of practice which limits SSI emergency advance payments to three categories of impairment and which fails to make presumptive disability determinations in advance of final determinations.

Legal Services Program Assisted: Legal Aid Society of Mecklenburg County, 6th Floor, Professional Services Center, 403 N. Tryon Street, Charlotte, North Carolina 28202.

Status: Pending upon cross-motions for summary judgment following an order of the court directing the defendant to make a report concerning improvement of the defendant's procedures.

NSCLC Participation: NSCLC drafted the pleadings, briefs, and participated in argument of motions for summary judgment.

B. *Case: Harrison v. Crowell*, Federal District Court, Central District of California, No. 73-1402-RF.

Issue: Compliance by trustees of the Southern California Construction Laborers Pension Trust with their duty to formulate reasonable eligibility criteria.

Legal Services Program Assisted: Legal Aid Foundation of Los Angeles, 2301 South Hill Street, Los Angeles, California 90007; California Rural Legal Assistance, 126 West Mill Street, Santa Maria, California 93454.

Status: Pending upon defendants' motion for summary judgment set for argument in September, 1975.

NSCLC Participation: NSCLC assisted in drafting the initial complaint and wrote memoranda in opposition to motions to dismiss by several defendants; that pleading and briefing formed the model for subsequent appearances by intervenors. NSCLC has also conducted all the extensive discovery done on plaintiffs' behalf.

C. *Case: Oliver v. Weinberger*, Federal District Court, Northern District of California, No. C-74-1416-SC.

Issue: Constitutionality of Social Security Act provision denying to divorced husbands of fully insured individuals benefits equivalent to divorced wives of fully insured individuals.

Legal Services Program Assisted: American Civil Liberties Union Foundation, 22 E. 40th St., New York, New York 10016.

Status: Case is at issue and in the discovery stage; the court denied a motion of the wife for intervention, although granted leave to file an amicus brief.

NSCLC Participation: The NSCLC drafted and filed the pleadings and prepared the memoranda in connection with motions and the petition for intervention, in addition to participating in discovery activities.

D. *Case: Western Mercantile Agency, Inc. v. Froates*, in the Court of Appeals of the State of Oregon, Trial Court No. 33647.

Issue: Validity of inflexible 221-day limitation upon in-patient hospitalization paid under Title XIX Medicaid.

Legal Services Program Assisted: Coos-Curry Counties Legal Aid, Inc., North Bend, Oregon 97459.

Status: Pending on appeal before the court of appeals of the state of Oregon.

NSCLC Participation: NSCLC provided a legal memorandum to Coos-Curry

Legal Aid for use during the trial and, in the pending appeal, filed a brief *amicus curiae*.

E. Case: Hannington v. Weinberger, Federal District Court, District of Columbia, No. 74-1015.

Issue: Whether SSI disability beneficiaries within the grandfathering rollback provision are entitled to a pre-termination hearing.

Legal Services Program Assisted: Legal Aid Society of the Pima County Bar Association, 30 N. Church St., Tucson, Arizona; Pine Tree Legal Assistance, Inc., Coe Building, Room 53, Bangor, Maine 04401 and Cambridge and Somerville Legal Services, Inc., 188 Broadway, Somerville, Massachusetts 02145.

Status: Summary Judgment for the defendant was granted and, for various reasons, a decision against an appeal was made.

NSCLC Participation: NSCLC drafted the pleadings and the memoranda in connection with summary judgment motions and appeared during argument on said motions.

F. Case: Lax v. Edwards, Superior Court of California, County of Los Angeles, No. NCC-10209-B.

Issue: Propriety of the pension trustees' interpretation of a pension plan, the effect of which was to deprive the plaintiffs of their pensions; application of the "short term contributory employer" provision to the plaintiffs is contrary to the intent behind that provision.

Legal Services Program Assisted: San Fernando Valley Neighborhood Legal Services, 13327 Van Nuys Boulevard, Pacoima, California 91331.

Status: Pending upon a motion for summary judgment filed by the plaintiffs and set for argument August 29, 1975.

NSCLC Participation: NSCLC drafted the complaint, the summary judgment motion, the memorandum in support thereof, and will actively participate in the forthcoming argument on the motion.

G. Case: Wilson v. Trustees, Pension Trust for Operating Engineers (complaint drafted and ready to be filed).

Issue: Propriety of pension trustees giving conclusive effect to Social Security records in finding a break in employment where an ambiguity existed concerning whether the claimant was, during the questioned time, an employee or an independent contractor.

Legal Services Program Assisted: Fresno County Legal Services, Inc., Brix Building, 1221 Fulton Mall, Fresno, California 93721.

Status: Appeals procedure within the administrative framework of the trust has been unsuccessfully attempted and suit ready to be commenced immediately.

NSCLC Participation: NSCLC participated in the appeals procedure and has drafted the complaint.

H. Case: Tomlin v. Crowell, Superior Court, State of California, County of Los Angeles, No. C-108967.

Issue: Validity of provision in pension plan restricting circumstances under which pro rata credit can be earned through work generating contributions to a pension plan having a reciprocity agreement with the defendant pension trust.

Legal Services Program Assisted: Community Legal Assistance Center, 1800 W. 6th St., Los Angeles, California 90057.

Status: The case is at issue and in the discovery stage, the last step of which was the defendants' answers to interrogatories and objections dated August 1, 1975.

NSCLC Participation: The NSCLC assisted the Legal Services Neighborhood Office in drafting the complaint, the memorandum in opposition to a motion to dismiss and the interrogatories.

I. Case: Martinez v. Weinberger, Federal District Court, Central District of California, No. CV-75-1651-RJK.

Issue: Constitutionality of Social Security Act provision terminating benefits of fully insured individual upon deportation under specified circumstances.

Legal Services Program Assisted: International Institute of Los Angeles, One Stop Immigration Center, 1441 Wright St., Los Angeles, California 90015.

Status: Complaint filed May 15, 1975 and, by stipulation, the defendant has until September 26, 1975 to file a responsive pleading.

NSCLC Participation: The NSCLC performed the background research necessary to formulate theories and drafted the complaint.

J. Case: Deutsch v. Army and Air Force Exchange Service, Federal District Court, Central District of California, No. 752928.

Issue: Whether an employee of a federal non-appropriated fund activity can be involuntarily retired at age 62, pursuant to a pension plan, consistent with the Federal Age Discrimination in Employment Act of 1967.

Legal Services Program Assisted: California Rural Legal Assistance, 126 W. Mill Street, Santa Maria, California 93454.

Status: The complaint was filed August 28, 1975.

NSCLC Participation: NSCLC provided technical assistance in the nature of research and in complying with the administrative formalities prerequisite to a suit. The NSCLC also drafted and filed complaint.

K. Case: Cheney v. Hampton, Federal District Court, District of Oregon (number of cause, unknown).

Issue: Eligibility of plaintiff for civil service retirement annuity where denial based upon alleged voluntary separation where the plaintiff was forced to terminate employment in the face of unsupported allegations of homosexual conduct.

Status: Suit filed, awaiting defendant's responsive pleading.

NSCLC Participation: NSCLC drafted the pleadings, brief in support of jurisdiction, and formulated the theories.

Legal Services Program Assisted: Legal Aid Service, East County Office, 4420 South East 64th Avenue, Portland, Oregon 97206.

L. Case: Flonnoy v. Dykhouse, Superior Court of California, County of Alameda, No. 444179.

Issue: Validity of pension trust provision requiring that a disability pension is payable only if the disability is incurred within 6 months of the last month of contributory employment, where the employee was unable to find employment within the industry.

Legal Services Program Assisted: Legal Aid Society of Alameda County, 2357 San Pablo Ave., Oakland, California 94612.

Status: The case is at issue and in the discovery stage.

NSCLC Participation: The NSCLC provided to the assisted office a form for the complaint and an analysis of legal theories under which to proceed.

M. Case: McGrath v. Weinberger, Federal District Court, New Mexico, No. 74577-C.

Issue: Constitutionality of "representative payee" provision in the Social Security Act which authorizes the appointment of such a functionary without a prior procedural due process hearing.

Legal Services Program Assisted: Northern New Mexico Rural Legal Services, P.O. Box 1464, Las Vegas, New Mexico 57701.

Status: Certified as a statewide class action, motion for summary judgment by defendant denied, scheduled for trial September 15, 1975.

NSCLC Participation: Initially appeared by way of brief amicus curiae and subsequently participated in briefing all issues thereafter arising.

N. Case: Mansfield v. Weinberger, Federal District Court, District of Columbia, No. 75036.

Issue: Constitutionality of SSI provision which does not give individual grants to married persons living apart until 6 months have elapsed following the separation.

Legal Services Program Assisted: Western Center on Law and Poverty, 1709 W. 8th St., Los Angeles, California 90017.

Status: Summary judgment motion granted in defendants favor on July 29, 1975. A decision to appeal is currently being considered.

NSCLC Participation: Formulation of theories and preparation of pleadings and written memoranda were a cooperative venture on the part of NSCLC and the Western Center on Law and Poverty.

O. Case: Miller v. De Paulo Health Plan, Superior Court, State of California, County of Los Angeles, No. C-122674.

Issue: Compliance by a private pre-paid health plan with state and federal laws regulating the operation of such plans.

Legal Services Program Assisted: Community Legal Assistance Center, 1800 W. 6th St., Los Angeles, California 90057; National Health Law Program, 10995 LeConte Ave., Los Angeles, California 90024.

Status: Complaint filed May 5, 1975 and no responsive pleading yet submitted by defendant; interrogatories have been served upon the defendant.

NSCLC Participation: NSCLC did extensive research preparatory to formulation of theories and participated in conferences devoted to that end; in addition, NSCLC provided the resources for an extensive factual investigation.

P. Case: Gadsen v. Weinberger, Federal District Court, Central District of California (Complaint ready for filing).

Issue: Constitutionality of provision in Title XVIII which permits carriers to make final and binding determinations with respect to contested claims under Part B.

Legal Services Program Assisted: Legal Aid Society of Orange County, 1932 W. 17th St., Santa Ana, California 92706.

Status: Complaint drafted and ready to be filed.

NSCLC Participation: NSCLC obtained a dismissal without prejudice of the suit because it had been improperly commenced, performed the research necessary to reexamine and reformulate the theories, and prepared for filing the complaint.

Q. Case: McCarthy v. Weinberger, Federal District Court, Western District of Missouri, No. CB121-W-4.

Issue: Whether the standards for appointment of a representative payee under the Social Security Act are constitutionally overbroad and vague.

Legal Services Program Assisted: Legal Aid Society of Greater Kansas City, Missouri, 921 Walnut St., Kansas City, Missouri 60106.

Status: The plaintiff is currently resisting a motion for summary judgment; discovery proceedings have been undertaken, however, by the plaintiff.

NSCLC Participation: NSCLC has directly participated in the briefing of the various issues before the court.

R. Case: Commonwealth of Massachusetts Board of Retirement v. Murgia, U.S. Supreme Court, No. 74-1-44.

Issue: Constitutional validity of state law requiring mandatory retirement of uniformed police officers at age 50.

Legal Services Program Assisted: NSCLC is appearing amicus curiae in collaboration with the American Association of Retired Persons and the National Retired Teachers Association.

NSCLC Participation: The NSCLC prepared a brief amicus curiae which has been served and filed with the Supreme Court.

S. Case: Cardinale v. Matthews, Federal District Court, District of Columbia, No. 74-930.

Issue: Constitutionality of HEW Regulations allowing reduction, suspension or termination of benefits in certain circumstances; e.g., clerical error, without advance notice.

Legal Services Program Assisted: Western Center on Law and Poverty, 1709 W. 8th Street, Los Angeles, California 90017.

Status: On August 28, 1975 the court declared said regulations unconstitutional.

NSCLC participation: NSCLC acted as co-counsel and, through its Washington, D.C. office, took care of the procedural formalities.

V. LEGISLATIVE AND ADMINISTRATIVE ASSISTANCE

1. *Income Maintenance*.—a. Assisted William Oriol, Staff Director of the Senate Special Committee on Aging, with the organization of testimony for hearings which were held by Senator Tunney in behalf of the Senate Special Committee in Los Angeles. Subject of hearings was effect of inflation on lives of elderly.

b. Responded to Senator Kennedy's request for comments in connection with his hearings on Administrative Problems in SSI by sending a letter, which, we are told, will be printed in the appendix to the hearings.

c. At the request of Representative Holtzman, commented on her Pension Reform Act amendments (H.R. 2593).

d. Wrote a very brief statement requested in connection with Senator Tunney's hearings in California on Social Security and the cost of living. The subject of the statement was the adequacy of the Social Security escalator provisions vis-a-vis the inflation we are now experiencing.

e. Attended a meeting in Baltimore, chaired by Nicholas DiMichael and Eleanor Bader, to which representatives of various aging and disability interest groups were invited. The subject of this meeting was in part legislative proposals under consideration in the Bureau of SSI in connection with the SSI program.

f. Testified at hearings on SSI held by the Public Assistance Subcommittee of the House of Representatives Committee on Ways and Means.

g. Prepared comments addressed to staff of Senator Harrison A. Williams, Chairman of the Labor and Public Welfare Committee, on the Labor Department's

ERISA Information Bulletin 75-1 relating to transactions between a Plan and a party in interest under certain circumstances.

h. At the request of Senator Frank Church, Chairman of the Special Senate Committee on Aging, wrote him a letter expressing the favorable views of NSCLC on his bill, S. 650, which would raise the special minimum benefit Social Security payment provision (42 USC 415 [a] [3]) to reflect the recent increase in the cost of living and would tie the benefit to future rises in the cost of living.

2. *Health.*—a. Obtained Medicare/Medicaid manuals used in granting and denying claims and other materials necessary in representation of persons having complaints with this program. Obtained these materials under the Freedom of Information Act after many communications with officials in HEW over a period of months. Also obtained a waiver of charges for the duplication of certain of these materials on the basis that this information benefits the general public as allowed under the Freedom of Information Act and HEW regulations implementing the Act.

b. Attended meeting held by HEW where highlights of the Long Term Care Facility Improvement Study were presented.

c. Served as a member of the Los Angeles City Attorney's Task Force on Nursing Homes, January through June, 1975. The task force advised the City Attorney's office with respect to its preparation of A Consumer's Guide to Nursing Homes in Los Angeles, made recommendations with respect to local and statewide legislation to improve nursing home conditions.

d. In response to inquiries from Legal Services attorneys in New Jersey and Texas, assisted with respect to identifying and locating bill to make permanent the 1972 grandfathering of Medicaid recipients whose Medicaid eligibility would otherwise have been lost as a result of an increase in their Social Security benefit.

e. Communicated with Bureau of Health Insurance concerning its time table for issuance of regulations to implement assurance of payment procedures enacted by the Congress in 1972.

f. Responded to request for help in drafting a revised nursing home ombudsman bill for California from the office of State Senator Roberti. Our assistance was quite extensive and included: (1) putting together an informal conference of nursing home experts in California to discuss the components of an effective ombudsman program; (2) communicating with model ombudsman programs across the country to discover good and bad features of their programs.

g. Responded to request from the staff of Senator Tunney's office to prepare memorandum concerning the effects of inflation on the health needs of senior citizens.

h. Prepared written memorandum for submission to House Ways & Means Subcommittee for hearings that it conducted into selected Medicare subjects.

i. Prepared comments to proposed federal regulations implementing 1972 change in definition of skilled nursing facility services.

3. *Probate, Guardianship.*—a. The National Senior Citizens Law Center has continued to provide active support of those elderly and legal services groups in California supporting AB 1417. AB 1417, which is sponsored by Assemblyman Lanterman, will provide increased procedural safeguards for those persons alleged to be mentally incompetent for purposes of appointing a guardian. Apart from this impact in California, our assistance with AB 1417 has had direct impact in at least two other states. In Delaware, the Public Guardian's office has used AB 1417 as a model in setting out its rules and procedures for operation in the filing of guardianship petitions. In Florida, Florida Legal Services has used AB 1417 in working with interested groups there to introduce similar legislation before the Florida Legislature. AB 1417 has currently been successfully moved out of the Assembly Judiciary Committee, and is currently before the Assembly Ways and Means Committee where it will be heard prior to June 26. The prospects at this point are favorable, and the bill will continue to undergo hearings in both houses in California throughout the summer.

b. Testified before the House Select Committee on Aging, Subcommittee on Health Maintenance and Long-Term Care, regarding legal issues associated with alternatives to institutionalization of the elderly.

4. *Older Women.*—a. Met with the staff of the Senate Special Committee on Aging to discuss Social Security issues affecting women in preparation for hearings that they have scheduled on this subject.

b. Met with the staff of the House Select Committee on Aging to discuss legal issues affecting older women in connection with a series of hearings that they are planning on the subject.

c. Pursuant to a decision reached at the December San Francisco meeting of persons interested in women's issues, wrote to the Civil Rights Commission about the special interests of women vis-a-vis the Age Discrimination in Employment Act.

d. Developed a form for registering complaints for the local NOW re: age discrimination in employment. Our purpose was to gather information and statistics.

e. At the request of California State Senator Smith, sent letters of support on his displaced homemakers bill (S.B. 825) to members of the California ~~Senate~~ Finance Committee.

f. Sent "Outline of Legal Issues Affecting Older Women" prepared by Anne Silverstein and Sally Hart Wilson, Staff Attorneys at NSCLC, to a number of people including: House Select Committee on Aging (Used as a research tool for their hearings on Economic Problems of Older Women); Anita MacIntosh, in conjunction with the Urban Institute's current grant from the Ford Foundation for A Women's Policy Research Center; Barbara Resnick Assc. for a conference in conjunction with Mt. Vernon college on single women of all ages.

g. Met with staff of the House Select Committee on Aging and Senate Special Committee on Aging regarding their hearings on problems of the older woman and with Anita MacIntosh of the Urban Institute regarding their research plan.

h. Spent time talking with Del. Marilyn Goldwater, sponsor of the Maryland Part-Time Opportunity Act and others regarding the Tunney bill and possibility of passage. Also talked to persons who drafted the Private Part-Time Opportunity Act about possible sponsors.

5. *Expansion of Legal Services to the Elderly.*—a. The allocation of \$1 million of § 308 model project monies by the Administration on Aging to finance eleven model projects for fiscal 1975-76 was very much the result of efforts by Senator Tunney (following up hearings held in Los Angeles entitled, "Improving Legal Representation for Older Americans," on June 14, 1975—which hearings were worked on extensively by the National Senior Citizens Law Center staff and staffs of Senator Tunney and the Senate Special Committee on Aging), and the National Senior Citizens Law Center. After these hearings were held in Los Angeles, Senator Tunney introduced an amendment to the Older Americans Act Model Projects appropriation of \$1 million specifically to be used for the funding of legal services programs. NSCLC staff was intimately involved in working out the details required to see that this \$1 million appropriation, which was passed by the Congress (but without a specific line item talking about legal services) be ultimately used by the Administration on Aging for the funding of legal services model projects.

b. NSCLC has played a major role in the development of Federal legislation (in the form of 1975 Amendments to the Older Americans Act) which will, as has been said by several members of the Administration on Aging, see a legal services component funded out of every Area Agency on Aging across the country within the next year or two. This legislation is presently in Conference. Both Senate and House versions provide a major thrust through the Older Americans Act and ultimately through all Area Agencies on Aging for the provision of legal services to the elderly across the country and for the training of attorneys and paralegals to provide these services. NSCLC staff provided key input and impetus to legislative committees at every stage of the game in seeing that this legislation became a reality. Thus, NSCLC staff testified before Congressman Brademas' Subcommittee on Select Education, and before Senator Eagleton's Subcommittee on Aging of the Senate Labor and Public Welfare Committee. The Senate and House Committee reports contain language and information provided and worked on by NSCLC staff.

c. The California State Legislature has asked that a study be done on possible sources of funding for California Legal Services programs wishing to serve the elderly. Peter Coppelman obtained a grant from the State Legislature for purposes of conducting such a survey. We spent considerable time with Peter explaining the various funding alternatives of which we were aware, and also gave him full access to our entire files on this matter.

d. Participated in several conferences on H.R. 7005 which would authorize the Legal Services Corporation to fund back-up centers (such as NSCLC) by

grant or contract. Advised on the initial drafting of the bill and have worked closely with the House Judiciary Committee staff on background information and the scheduling of hearings. Have also conferred with Senator Cranston's staff and with Chairman Roger Cramton of the LSC on the subject.

6. *Age Discrimination*.—Wrote requested letter to California Assembly Business and Professions Committee in support of mandatory retirement bills, AB 1737-8.

7. *Consumer Issues*.—a. Wrote requested comments to FTC on proposed prescription drug legislation.

b. Commented on proposed Hearing Aid reform measure, California S.B. 173.

c. On request of Senator Frank E. Moss, made comments on S. 670, The Consumer Fraud Act, on the bill's effect on the elderly poor, as well as on technical features of the bills.

d. On request supplied the staff of the Subcommittee on Government Regulation, Senate Select Committee on Small Business, with material relating to abuses of the hearing aid industry vis-a-vis the elderly poor (collected in connection with S. 670, the Consumer Fraud Act) and submitted possible questions to ask officials of the Federal Trade Commission relating to their regulation of the industry.

8. *Washington Assistance*.—The Washington weekly newsletter has been a major and time-consuming undertaking in this field. It lists all known and anticipated future legislative hearings of interest to the elderly and all items of interest to the elderly appearing in the Federal Register. It also includes Federal legislative and administrative news items in its field.

9. *Miscellaneous*.—a. Sent a letter to the Civil Service Commission regarding the controversy between it and the Social Security Administration over the status and classification of SSI judges.

b. At the request of Senator Tunney, wrote him a letter expressing the favorable views of NSCLC on his bill, S. 792, the proposed "Part-Time Career Opportunity Act" which, in general, would gradually restructure 10% of the Federal Executive Branch positions into part-time positions. The bill passed the Senate on June 23 and is now before the House Post Office and Civil Service Committee.

c. Talked with Dan Schudler of the Pennsylvania Governor's Office, who was concerned with the coordination of Title XX programs with Title III and VI of the Older Americans Act. Conversation followed up with various AA's of Congressmen who had introduced legislation to ameliorate this problem.

VI. COMMUNITY EDUCATION

A. Conference participation and speeches

1. Participated in the Western Gerontological Society Annual Meetings in San Francisco. At these meetings we presented a day-long panel on legal problems of the elderly to help aging professionals and elderly persons concerning rights, remedies, and opportunities within the general theme of "From Client to Courtroom: How Can the Lawyers Make Use of Information Gathered by Aging Professionals in the Field?"

2. Attended and participated in the Third Annual Conference of the National Caucus on the Black Aged, Inc., April 13-15, 1975, Washington, D.C., the conference topic being, "Aging Black Women and Federal Policies: 1960-2000 A.D."

3. Attended Federal Bar Association Conference on Openness in Government, May 22-23, 1975, Washington, D.C.

4. Attended the National Convention of the National Women's Political Caucus, June 27-29, 1975, Boston, Mass. Helped draft resolution adopted by Caucus on Equality for Women Under Social Security Law and Regulation.

5. Was a panelist at the Sixth National Conference on Women and the Law held at Stanford; the topic addressed by the panel was problems of older women.

6. Led workshop on legal issues affecting older women at the Stanford Conference on Women and the Law. In connection with this conference we prepared a comprehensive outline of legal issues affecting older women which required research into aspects of the Social Security system, private pension law, employment law, and family law.

7. Made speech at conference on Women and the Law in Las Vegas in mid February.

8. Made speech on "An Analysis of the Older Americans Act: Its Impact on State and Federal Legislation" for North Carolina training session in early April.

9. Made speech on "Law and the Older Adult" at the Second Annual Georgia Conference on Aging in early April at the University of Georgia.

10. Testified at hearings on problems of the elderly conducted by Democratic Mayors' Conference in San Francisco in mid-April.

11. Attended Urban Elderly Coalition meeting in Washington, D.C. in mid-April.

12. Made presentation to Regional Training Conference of Directors of Aging Programs conducted by NCOA and sponsored by Community Services Administration Region IX in Santa Cruz, California in early May.

13. Made presentation to National Conference on Social Welfare held in San Francisco in mid-May.

14. Met with Utah State Coalition of Senior Citizens and the Rocky Mountain Gerontology Center representatives in Salt Lake City to discuss provision of legal services to the elderly.

15. Made speech and conducted workshops at the National Forum on Consumer Concerns of Older Americans held in Washington, D.C. in early June.

16. Spoke at the NCOA conference held in Seattle in early June covering various aspects of legal services to the elderly.

17. Delivered a paper on legal services for the elderly at the 10th International Congress of Gerontology June 22-28, 1975 in Israel. (Received a travel grant from the Gerontological Society to attend.)

B. Community at large

1. Discussed the work of our program and the availability of legal services for senior citizens locally with Edith Skinner, Director of Geriatrics Project at the Community Mental Health Center, Mount Sinai Hospital Division of the Cedars-Sinai Medical Center.

2. Presented, in cooperation with the USC Gerontology Center, the movie, "Resolution of Mossie Wax," a dramatic cinematic depiction of the plight of the elderly poor person in America.

3. Have continued to meet on a monthly basis with the Ad Hoc Professional Committee on Aging, which is composed of community resources in the Southern California area including the city and county AAA, and is mainly educationally oriented. The purpose of this Committee again, is to bring together existing community resources and to expand services on this basis. Our participation in these meetings is an educational one in that legal services may be a source of expanding other social services to the elderly poor. A good example of this, with respect to the Ad Hoc Committee, is that UCLA plans to develop an elderly paralegal program. At the same time, LACC, in cooperation with the community college district, is attempting to expand its multipurpose senior centers to include legal services, and is seeking funding therefor. One of the things which we have established is that UCLA elderly paralegal program may be able to place many of the people it trains with the LA community college district. In this way legal services may become a more integral part of the community.

4. On Friday, May 23, 1975, the Ad Hoc Professional Committee on Aging sponsored a day-long conference for professional educators on expanding educational and other social services to the elderly. Present at the meeting were executives from the LA county adult schools, from the state colleges, from the community colleges, and from the University of California system. In addition, resource people were brought together representing the city and county AAA's, the Department of Public Social Services and the County Department of Health.

5. Gave a speech on Social Security and Women to a lay audience—program sponsored by the Riverside County Commission on the Status of Women.

6. Spoke to a group of International Longshoremen and Warehousemen Union members in South Los Angeles concerning the Employee Retirement Income Security Act of 1974 and its effect on their pension rights in the various plans which cover them.

7. Spoke to a group of interested Loyola law students about the legal problems of the elderly poor.

8. Participated in a KHJ radio broadcast with community college persons designed to alert community resources of the problems of elderly poor persons, in-

cluding legal problems, and of the opportunities for working together in coordinating efforts toward the goal of expanding social services to the elderly, including legal services.

9. Presented testimony on innovative methods of enforcing nursing home laws and regulations at hearings held by the City of Los Angeles on nursing homes.

10. Spoke on remedies for enforcement of nursing home laws and regulations at Conference of Southern California RSVP Program directors in Culver City.

11. Spoke to Human Rights Section of L.A. County Bar Association at Biltmore Hotel in latter part of January.

12. Discussed a proposed documentary on widows with the KCET producer thereof.

C. Academic involvement

1. Wrote article for the Arizona Law Review to be published in Fall, 1975, entitled "Legal Services for the Nation's Elderly."

2. Wrote manuscript for Duke University training program, April 1975, entitled, "The Older Americans Act and Related Legislation: Possibilities for Advocacy for Older Americans."

3. Initiated communication and coordinated the scheduling of NSCLC to teach a course on the elderly at USC.

4. Initiated showing of two films at USC regarding the problems of the elderly.

5. Made speech regarding legal services for the elderly at Portland State University in early February.

VII. MISCELLANEOUS

1. Drafted a resolution for submission to the State Bar of California Conference of Delegates urging that the Area Agencies on Aging fund Legal Services programs to provide representation to the elderly.

2. Served as an expert witness on private pensions generally and the Construction Laborers Pension Trust for Southern California in particular in an assault and battery case, *Ponce v. Local 300, et al.*, brought on behalf of a dissident member of the largest construction local in Los Angeles who was beaten by "security guards" hired by the union leadership while walking a picket line in 1971. One of the damages suffered by the plaintiff may have been a loss of the opportunity to earn sufficient credited service to qualify for a pension. It was on this subject which our knowledge of the pension plan was sought.

VIII. ADMINISTRATION OF NSCLC

1. Attended meeting in early February in New York regarding the interest of various private foundations in funding the back-up centers.

2. Conducted extensive search to fill various new and vacant positions at NSCLC.

3. Conducted search for possible less expensive quarters for Washington office. Examined several vacant office spaces, but found none less expensive than present quarters.

4. Washington office staff has spent a great deal of time working on alternative methods of producing and distributing a 2,000-copy newsletter.

5. Communicated with USC regarding compliance with Pension Reform Act of 1974 requirement of coverage for part-time employees.

6. Attended and coordinated full NSCLC Board of Directors meeting on January 17, held just prior to our national conference at the Americana Hotel in Culver City.

7. Attended Executive Committee meeting on May 19, 1975 in Washington, D.C.

8. Prepared mailers to keep Board informed of NSCLC activities.

9. Made several trips to the Washington, D.C. office, during trips for various out-of-town conferences, to discuss routine NSCLC Washington office business matters.

10. Attended Legal Services Project Advisory Group (PTG) meetings held in Denver, Colorado at the end of May.

11. Interviewed students at UCLA for Quarter-Away Program at NSCLC.

12. Prepared narrative portions for five proposals to AOA for funding for training of State and Area Agencies on Aging.

13. Attended various meetings of back-up centers and participated in discus-

sions on Legal Services Corporation Legislation and its effects on back-up centers.

Mr. LANIGAN. Frequently the requests we receive involve assistance and participation in litigation. Our main office is currently participating in 17 cases before Federal and State courts which occupies about one-third of its time. In the past year, the Washington office attorneys acted as local counsel in four cases in the district court and in one case before the Supreme Court. There have been some suggestions that since the Legal Services Corporation Act prohibits the Corporation from participating in litigation and since specialized litigation assistance is absolutely necessary for an effective legal services program, the Corporation may and should under existing law use grants and contracts to finance specialized litigation-support service centers, to provide litigation assistance to local legal services offices. This suggestion contemplates that more generalized technical assistance research, training and information clearinghouse functions, which are mandated by the statute, will be carried on directly by the Corporation, separate from the litigation support functions.

Even if this dichotomy of functions is legally permissible, it certainly would be duplicative, inefficient, and wasteful. Two separate organizations and staffs of attorneys and supporting personnel, equipment and supplies, would have to be established in each field of expertise, such as elderly law, health law, employment law, and housing law. Even then, neither set of attorneys would have full exposure to the complete range of problems. Situations passing from a nonlitigative to a litigative stage would have to be restudied and relearned by a second set of attorneys. Attorneys performing the generalized research training functions would not have the very valuable litigation experience, while attorneys providing litigation support would lack the broad exposure to their problem areas that would be provided by carrying on generalized research and training.

As I indicated, about one-third of the time of our main office attorneys is spent on litigation. The same attorney does research and training and provides litigation support. By doing all three, he constantly increases his experience and effectiveness in all three to the maximum. This would be lost if the functions are split up.

Unfortunately, under current law, which provides the Corporation may not participate in litigation other than on its own behalf, this wasteful, duplicative and inefficient split of functions may be mandatory if badly needed specialized litigation assistance is to be provided at all.

H.R. 7005 would give the Corporation the flexibility it needs to provide all types of legal support services in the most effective and economic manner possible. The Corporation would not be forced by an artificial restriction to divide closely related support services into separate funding and operating categories. The Corporation would be able to try out different groupings and methods of delivering support services to determine which are more effective, more efficient, and more economical. Perhaps the Corporation will discover that some types of support functions are provided better by grant or contract and others by the Corporation directly.

In closing, we urge the enactment of H.R. 7005 for two basic reasons. First, it will enable the Legal Services Corporation to determine

and adopt the best methods of providing necessary legal services to the poor. And second, it will enable the Corporation to continue to fund the very valuable contribution Legal Services backup centers are making in providing needed legal services to our Nation's poor citizens, including its elderly poor.

Thank you for hearing us, Mr. Chairman and members of the subcommittee.

[The prepared statement of James A. Lanigan follows:]

STATEMENT OF JAMES A. LANIGAN, DIRECTING ATTORNEY, NATIONAL SENIOR
CITIZENS LAW CENTER, WASHINGTON OFFICE

My name is James A. Lanigan. I am the Directing Attorney of the Washington Office of the National Senior Citizens Law Center. I am making this statement at the request of the Subcommittee staff. The NSCLC is what has been known as a legal services back-up center and specializes in legal problems of the elderly poor. Our organization is sponsored by the University of Southern California and has been financed by the Office of Economic Opportunity and currently by the Community Services Administration. Our current CSA grant expires on March 31, 1976. We also have recently received a grant from the Administration on Aging, primarily to provide technical assistance to State and area agencies on aging in establishing, developing, expanding and supporting a network of legal service activities to serve the needs of older persons.

The activities under the two grants do not duplicate each other since the CSA grant finances our support (research, technical assistance, litigation assistance, training and dissemination of information) to legal services offices providing service to the poor and our AOA grant finances assistance to State and area agencies in their activities.

I will not attempt to give you a long lecture on the problems of our elderly citizens. Suffice to say that the aging constitute a large and growing segment of our population. There are over 40,000,000 men and women in this country over the age of 55 of whom 21,000,000 are over 65. This is about 20% of the nation's population and 30% of the adult population. While those over 65 comprise about 10% of our population, they account for 20% of the poor, and this is a proportion that is growing. Nearly 50% of all Blacks 65 and over live on incomes below the poverty guidelines.

NSCLC's experience demonstrates beyond doubt that these men and women have both special problems of their own and the normal problems of living in an aggravated form. Income maintenance, transportation, health, food and housing are literally matters of life and death to the elderly.

A few years ago, surveys indicated that only about 6% of the Legal Services Offices' clients were elderly, whereas 20% of the poor are elderly. Thus, the number of elderly legal service clients constituted only 30% of what should be expected. At the same time, it is obvious that the elderly poor encounter many problem areas in which they may require legal assistance. To name a few—pensions, social security, supplemental security income, medicare, medicaid, discrimination in employment, veterans' benefits, estate planning, food stamp eligibility, guardianship proceedings, hospital and nursing home patients' rights, and housing. Many of these problems relate closely to the Federal government and to Federal legislation, regulations and litigation—which led to the establishment of NSCLC's Washington Office.

NSCLC has acted vigorously to improve the delivery of legal services to the elderly poor. In 1974 and early 1975, over 750 attorneys were trained in relevant substantive areas of the law and in such practical problems as organizing law offices to serve the elderly. Training sessions were held in 10 regions throughout the country and also in New Orleans and Los Angeles. Several hundred pages of instructional material were distributed to participants and to others throughout the country, including this Subcommittee.

Recent NSCLC publications include: *Estate Planning and Administration Guidebook*, *Veterans Benefits and the Elderly Veteran*, *The Nursing Home Law Handbook*, *Materials on the Supplemental Security Income Program*, and *Bibliography of Legal Materials*. The SSI "Materials" constitute a training manual that was distributed to about 900 attorneys and other professionals. In addition, NSCLC maintains a mailing list of about 625 subscribers to the Social Security Claims Manual provisions on SSI. The initial distribution of the Claims Manual

and its frequent changes was undertaken by NSCLC after it persuaded the Social Security Administration to release the material to the public. Thereafter, SSA volunteered to distribute the material to the list maintained by NSCLC.

An extensive article on the Employee Benefit Security Act and other material was prepared for the *Clearinghouse Review*, an article on guardianship and involuntary commitment was prepared for the *Missouri Law Review*, a chapter was written for a book dealing with community planning for the elderly, an article was contributed to the *American Trial Lawyers Association Journal* and an article on legal services for the elderly was written for the *University of Arizona Law Review*.

The Washington office of the NSCLC issues a highly popular weekly newsletters which covers Federal legislation and regulatory developments in areas of interest to the elderly as well as notices of Congressional and executive branch committee meetings and the like. Our main office issues a periodic newsletter concerned with recent and significant legal developments. A copy of a recent issue of each is attached.

The NSCLC has drafted, or participated in drafting, legislation in various fields affecting the elderly, including private pension plans, condominium development, SSI, guardianship and involuntary commitment, Older Americans Act amendments, and State-funded legal services programs for the elderly. In fact, the first draft of the floor amendment which created the House Select Committee on Aging was prepared by the Washington Office at the request of Rep. C. W. (Bill) Young. Acting on request and on behalf of its clients, it has provided expert oral testimony and written statements on bills affecting its client community.

NSCLC often comments on proposed regulations and monitors regulations for consistency with statutory requirements and for adequacy and reasonableness. The Washington Office is available as a conduit between a legal services attorney with a client having a legislative or administrative problem and the appropriate legislators, committee staff or administrative agency personnel.

Through all this activity, NSCLC has sensitized legal services attorneys to the problems of the elderly poor and to the availability of NSCLC as a resource. We receive and respond to numerous requests from these attorneys for assistance in particular legal problems and actions involving the elderly. The NSCLC policy is to offer assistance to the degree it is requested. Consequently, the response ranges from in-depth research into statutory, regulatory and decisional law to short answers to relatively simple questions.

Frequently the request involves assistance and participation in litigation. Our main office in Los Angeles is currently participating in seventeen cases before Federal and State courts. That office estimates that litigation-related work occupies one-third of its time. In the past year, Washington Office attorneys have acted as local counsel in four cases in the U.S. District Court for the District of Columbia and in one case before the Supreme Court. Litigative activity, however, does not occupy as high a proportion of the time of the Washington Office as it does of the Los Angeles Office.

There have been some suggestions that since the Legal Services Corporation Act prohibits the Corporation from participating in litigation and since specialized litigation assistance is absolutely necessary for an effective legal services program, the Corporation may and should under existing law use grants and contracts to finance specialized litigation-support service centers to provide assistance in litigation to local legal services offices. This suggestion contemplates that more generalized technical assistance, research, training and information clearinghouse functions, mandated by the statute, will be carried on directly by the Corporation, separate from the litigation support functions.

Even if this dichotomy of functions is legally permissible, it certainly would be duplicative, inefficient and wasteful. Two separate organizations and staffs of attorneys and supporting personnel, equipment and supplies, would have to be established in each field of expertise such as elderly law, health law, employment law, and housing law. Even then neither set of attorneys would have full exposure to the complete range of problems. Situations passing from a non-litigative to a litigative stage would have to be restudied and relearned by a second set of attorneys. Attorneys performing the generalized research and training functions would not have the very valuable litigation experience while attorneys providing litigation support would lack the broad exposure to their problem areas that would be provided by carrying on generalized research and training.

As I indicated, about one-third of the time of our main office attorneys is spent on litigation. The same attorney does research and training and provides litigation support. By doing all three, he constantly increases his experience and effectiveness in all three to the maximum. This would be lost if the functions are split up.

Unfortunately, under current law which provides the Corporation may not "participate in litigation" (other than on its own behalf), this wasteful, duplicative and inefficient split of functions may be mandatory if badly needed specialized litigation assistance is to be provided at all.

H.R. 7005 would give the Corporation the flexibility it needs to provide all types of legal support services in the most effective and economic manner possible. The Corporation would not be forced by an artificial restriction to divide closely-related support services into separate funding and operating categories. The Corporation would be able to try out different groupings of and methods of delivering support services to determine which are more effective, more efficient and more economical. Perhaps the Corporation will discover that some types of support functions are provided better by grant or contract and others by the Corporation directly.

In closing, we urge the enactment of H.R. 7005 for two basic reasons: First, it will enable the Legal Services Corporation to determine and adopt the best methods of providing necessary legal services to the poor. Second, it will enable the Corporation to continue to fund the very valuable contribution legal services back-up centers are making in providing needed legal services to our nation's poor citizens, including its elderly poor.

[From the NSCLC Washington Weekly Newsletter, Oct. 2, 1975]

CALIFORNIA GOVERNOR SIGNS DISPLACED HOMEMAKER BILL

On September 26, 1975, Governor Edmund G. Brown, Jr. signed S.B. 825, the California Displaced Homemakers Act. A displaced homemaker is a woman who has fulfilled her role as a homemaker and who is forced by death or divorce or loss of income to enter or reenter the job market. She is not eligible for Social Security, welfare, or unemployment. The Act provides \$200,000 for one model displaced homemaker project in Alameda County (Oakland, Berkeley, etc.). The model will be a multipurpose center with several components, including: Job training, placement and job creation; health, health education and health screening; educational counseling, including referring displaced homemakers to community college courses geared to finding employment; legal counseling providing paralegal services to displaced homemakers; and self-help counseling in areas such as money management.

Similar bills have been introduced in the House by Congresswoman Yvonne Braithwaite Burke (Cal.) (see Newsletter, June 6, 1975) and Senator John V. Tunney (Cal.) (see Newsletter, September 26, 1975).

SENATE COMMITTEE ON AGING TO HOLD HEARINGS ON WOMEN AND SOCIAL SECURITY

On October 22 and 23, 1975, the Senate Select Committee on Aging, Frank Church (Idaho) Chairman, will hold hearings on the subject of Women and Social Security (see calendar). The basis for the testimony and discussion at these hearings will be a working paper prepared by the Task Force on Women and Social Security appointed by Senator Church. Task Force members are: Verda Barnes, Administrative Assistant to Senator Church before her retirement this year, Herman Brotman, Consultant, Special Committee on Aging and former Assistant to the U.S. Commissioner on Aging; Alvin M. David, former Assistant Social Security Commissioner in charge of program evaluation, legislative planning and related functions; Juanita M. Kreps, Professor of Economics and Vice President of Duke University and member of the board, New York Stock Exchange; Lawrence Smedley, Associate Director, AFL-CIO, Social Security Department; and Dorothy McCammon, Consultant, Special Committee on Aging and former Assistant Director of Research, Social Security Administration, and Chairman of the Task Force.

The working paper is an analysis of the status of women in the Social Security system. It discusses the history of women in the work force; women in Social Security since 1935; and proposals to correct inequities in the Social Security system regarding women including the complaints women have against the Social Security system as it applies to them, proposals to eliminate these

complaints together with the pros and cons of these proposals, and finally, the Task Force's recommendations and findings. The witnesses will testify regarding both the proposals and the Task Force's recommendations and findings. Part of the hearings will consist of round-table discussions involving both the Task Force and the witnesses. The Task Force's working paper will be available on the first day of the hearings but not prior thereto.

FEDERAL EMPLOYEES HEALTH BENEFIT—MEDICARE COORDINATION IN DISPUTE

Recent hearings before the Health Subcommittee of the House Ways and Means Committee were held on a controversial plan to provide employees under federal employees health benefit (FEHB) plans with some form of supplemental Medicare coverage.

Most federal employees are eligible for, and participate in, FEHB plans in which the government assumes 60 per cent of the premium cost and the federal employee or annuitant pays the remaining 40 per cent. In addition, all federal workers and retirees are eligible at age 65 to purchase supplemental medical coverage under part B of Medicare. However, less than half and perhaps as few as a third of all federal workers and retirees have worked long enough at jobs covered by Social Security to be eligible for hospital coverage under part A of Medicare.

Medicare and FEHB benefits presently overlap in many areas. For employees and annuitants with both Medicare and FEHB protection, Medicare provides primary coverage and FEHB acts only as a supplement to Medicare benefits. However, FEHB premiums are not lower for enrollees with primary Medicare coverage, even though those enrollees receive back-up rather than comprehensive benefits from the program. In addition, since FEHB benefits overlap with Medicare part B supplemental coverage, there is no advantage in FEHB members enrolling for part B, even though the government would pay part of the cost.

Some members of Congress have expressed concern over the equity of the present system as well as a desire for closer coordination of FEHB and Medicare benefits. Section 210 of P.L. 92-603, passed in 1972, added a new subsection to Section 1862 of the Social Security Act. As amended, Section 1862(c) prohibited Medicare payments for services furnished after January 1, 1975, to persons enrolled in FEHB plans unless the Secretary of Health, Education and Welfare certified that FEHB plans had made available supplemental coverage for its enrollees who were covered under either or both parts of Medicare. The cut-off deadline was last year extended until January 1, 1976, by Section 4 of P.L. 93-480.

A joint report from the Civil Service Commission (CSC) and the Department of Health, Education, and Welfare (HEW), was submitted to Congress on February 27, 1975. It found serious difficulties in implementing the Congressional mandate of 1862(c). The CSC-HEW report instead offered a new "Medicare Supplement" option limited to those covered by both parts of Medicare. The CSC-HEW plan, as embodied in two draft bills sent to Congress this July, would amend the FEHB program legislation (5 U.S.C. §§ 8901-8913) and the Social Security Act. The FEHB amendments would require all government-wide FEHB plans, and permit other programs participating in FEHB, to offer the supplement option. The ceiling on federal contributions, now set at 75 per cent, would be removed; as a result, the government would pay the entire cost of the new option, up to maximum dollar limits for federal contributions to health insurance premiums.

Because the "Medicare Supplement" would not benefit persons enrolled in only one part—either A or B—of Medicare, the CSC-HEW report acknowledges that its proposal does not conform to the requirements of section 1862(c). H.R. 9178 containing the proposed amendments to the FEHB program was introduced July 31 by Rep. Richard C. White (Texas) by request of the Civil Service Commission. Rep. White (Chairman of the Retirement and Employee Benefits Subcommittee of the House Post Office and Civil Service Committee), has announced his opposition to the bill on the twin grounds that it fails to meet the legislative intent of 1862(c) and that it inequitably places part of the new option's cost on those who are unable to benefit from the option since they do not have full Medicare coverage. White further advocates repeal of 1862(c) to avoid the scheduled year end cut-off of Medicare coverage for FEHB enrollees.

The National Association of Retired Federal Employees (NARFE) in testimony before the House Ways and Means Subcommittee on Health took a

similar position. The Ways and Means Committee will be considering what action to take on FEHB-Medicare coordination and on the impending year-end cut-off of Medicare funds of FEHB members. The Senate Finance Committee is thought to favor holding to the requirements of 1862(c). A deadlock on the issue would mean loss by FEHB enrollees of Medicare benefits, higher government contributions for FEHB, and higher premiums for all FEHB enrollees.

NEW FOOD STAMP ALLOTMENT PROPOSALS PRESENTED

The U.S. Department of Agriculture (USDA) presented three new alternative proposals for revising food stamp allotments on Sept. 19 (40FR43403) to replace regulations struck down by an appellate court in *Rodway v. United States Department of Agriculture*, 514 F.2d 809 (D.C. Cir. 1975).

In *Rodway*, a challenge by low-income household members to food stamp allotment regulations, D.C. Circuit Judge J. Skelly Wright held that the USDA had not complied with procedural requirements in issuing the earlier regulations, which also failed to meet the Congressional intent of furnishing a nutritionally adequate diet to substantially all eligible households (see Newsletter June 20, 1975).

The disallowed regulations based food stamp allotments for all recipient households on the food needs of a hypothetical family of four (two adults between the ages of 20 and 35, one child aged 6 to 9, and one boy aged 9 to 12). The USDA had calculated the cost of its basic "economy food plan," the standard allotment for all four-person households, on this hypothetical "average." Households of other sizes were accorded a set percentage of the basic four-member household's allotment.

Judge Wright found that the nutritional adequacy of the now-discarded economy plan diet was a question of fact for administrative expertise, but held that the USDA could not use administrative convenience to justify ignoring generalized, easily identifiable and verified differences among recipients. The hypothetical family of four was an unacceptable standard because it did not take into account age and sex characteristics of individual households.

Two of the three newly proposed USDA plans set weekly and monthly food cost figures by age and sex and make special allowances for pregnant or nursing mothers. The third plan sets blanket allotments by family size alone but raises allotments for households with six or more members. Larger households were likely to be particularly disadvantaged by the old allotment system.

All three proposals are tied to a new "Thrifty Food Plan," which replaces the old "economy food plan" as the basic standard. It is based on a model diet containing a little more meat and a little less beans and grain than the old economy plan. Although overall benefits are approximately the same as under the economy plan, benefits for the elderly, women, and young children are reduced from present levels under the first two proposals. These plans also increase the price of food stamps for single-person households with net monthly income over \$170 and two-persons households with over \$270. As a result, single persons receiving both SSI and Social Security would receive reduced food stamp allotments, since combined SSI and Social Security benefits exceed \$170 in all states.

The deadline for comment on the new proposals, now set for October 6, is expected to be extended for at least 30 additional days. Submit comments to Jack O. Nichols, Acting Director, Food Stamp Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

ADVOCACY FOR THE ELDERLY URGED

At least two main speakers at the 25th Annual Conference of the National Council on the Aging (NCOA see Newsletter August 29, 1975) stressed the need for legal services for the elderly. Dr. Arthur S. Flemming, AOA Commissioner and Chairman of the Civil Rights Commission, emphasized in the opening address of the Conference that appeal to the courts is a legitimate course for advocates on behalf of the elderly. This, he stated, is why AOA is using some of its monies for legal services. In a luncheon address Joseph L. Rauh, Jr., General Counsel for the Leadership Conference on Civil Rights, cited a study which showed that the Social Security Administration was reversed 75% of the time in a 3-month sampling of reported cases where the aged apparently had attorneys. He opined that, given this type of record, what happens to the elderly who try to handle their own claims with the Social Security Administration. He called for the

expansion of legal services for the 25% of older Americans living in poverty as well as the 15% on the margin of poverty.

WEEKLY CALANDER OF EVENTS

- Meeting to discuss committee business. House Select Comm. on Aging, Wm. J. Randall (Mo.) Chmn. Oct. 7—10 A.M. RHOB.
- Mark up on comprehensive tax reform legislation with a focus on tax simplification in forms; domestic income of individuals. House Ways & Means, Al Ullman (Oreg.) Chmn. Oct. 7, 8, 9, 20—23—9 A.M. 1102 LHOB.
- Field hearings on problems of housing confronting the elderly. House Aging, Housing & Consumer Affairs Sub., Edward R. Roybal (Ca.) Chmn. Oct. 10—Carson City; Oct. 11—Las Vegas; Oct. 17 & 18—Los Angeles.
- Hearings on the Condominium Consumer Protection Act (S. 2273). Senate Banking, William Proxmire (Wisc.) Chmn. Oct. 6, 7, 8—10 A.M. 5302 DSOB.
- Hearings to review the Food Stamp Program and consider possible reforms. Senate Agriculture, Agricultural Research Sub., James B. Allen, (Ala.) Chmn. Oct. 7—9 A.M. 1202 DSOB; Oct. 8—9:30 A.M., 324 RSOB; Oct. 9, 10—9 A.M. 324 RSOB. (Nov. dates to be announced).
- Hearings on NHI legislation. House Ways & Means, Health Sub. Dan Rostenkowski (Ill.) Chmn. Oct. 28—9 A.M. 1102 LHOB.
- Hearings on the Part-Time Career Opportunity Act, H.R. 2305, and the Flexible Hours Act, H.R. 5451. House Post Office & Civil Service, Manpower & Civil Service Sub., David Henderson (N.C.) Chmn. Oct. 7—9:30 A.M., 311 CHOB.
- Oversight hearings on the access of handicapped people to public buildings. House Public Works, Investigation Sub., Jim Wright (Tex.) Chmn. Oct. 7, 9—10 A.M. 2167 RHOB.
- Hearings on S. 1840—The Fair Credit Reporting Act Amendments. Senate Banking, Consumer Affairs Sub., Joseph R. Biden, Jr. (Del.) Chmn. Oct. 22, 23, 28, 29—10 A.M. 5302 DSOB.
- Field hearings on H.R. 9155 & H.R. 808, providing for pension reform for State & local public service employees. House Education & Labor, Task Force on Welfare & Pension Plans of Labor Standards Sub., John H. Dent (Pa.) Chmn. Oct. 17, 18—Fed. Office Bldg., 40 Golden Gate, San Francisco; Oct. 31, Nov. 1—Chicago; Nov. 14 & 15—Waterbury, Conn.
- Oversight hearings and discussion of legislation (H.R. 3117), Nat'l Labor Relations Act amendments. House Education & Labor, Labor Management Relations Sub., Frank Thompson, Jr. (N.J.) Chmn. (POSTPONED FROM OCT. 6).
- Hearings on the subject of Women and Social Security. Senate Select Committee on Aging, Frank Church (Idaho) Chmn. October 22 & 23—9:30 A.M., 114 DSOB.
- Hearings on Delays in Social Security Appeals Process. House Ways & Means, Social Security Sub., James A. Burke (Mass.) Chmn. Oct. 20—2 P.M., 2222 RHOB.
- Mark up on no-fault auto insurance, H.R. 9650. House Commerce, Consumer Protection & Finance Sub., Lionel Van Deerling (Ca.) Chmn. Oct. 6—8—10 A.M., 2218 RHOB.
- Hearings on sundry legislation providing for the payment of attorney's fees in public interest cases. House Judiciary, Courts Sub., Robert W. Kastenmeier (Wisc.) Chmn. Oct. 6, 8—10 A.M., 2226 RHOB.
- Hearings on the federal response to housing needs of older Americans. Senate Special Comm. on Aging, Harrison A. Williams, Jr. (N.J.) Chmn. Oct. 7, 8—10 A.M., 4232 DSOB.

CHECKLIST OF FEDERAL REGISTER ITEMS OF INTEREST TO THE ELDERLY

September 26, 1975

- HEW; Medicare; final regulations on coverage of outpatient physical therapy and speech pathology services; effective October 28 40FR44320
- HUD; interim rule making on rent-income ratios and minimum rent requirements for low-income public housing. Comment deadline: Oct. 31 40FR44323
- HEW; SRS; correction of procedures for reconsidering disallowance of federal public assistance grants to states 40FR44326
- HEW; FDA; proposed procedures for filing a new drug application over protest. Comment deadline: Nov. 25 40FR44335
- Legal Services Corporation; closed meetings of Board of Directors Presidential Search Committee to interview candidates, Oct. 3-4 40FR44369

September 29, 1975

- HEW; Public Health Service; final regulations on grants under the Clinical Cancer Education Program 40FR44545
- Civil Service Commission; Amendment permitting noncompetitive term appointments under the Veterans Readjustment Program 40FR44539
- IRS; Temporary income tax regulations under ERISA allowing some retroactive changes in employee plans 40FR44544
- FTC; Proposed trade regulation and notice of hearings on proprietary vocational and home study schools. Comment deadline: Nov. 21 40FR44582
- Civil Service Commission; Closed meeting of the Federal Employees Pay Council; discussion of comparability adjustments on statutory federal pay systems, October 15 40FR44602
- HEW; FDA; Advisory committee meetings between Oct. 9 and Oct. 31; some open, some closed 40FR44597

September 30, 1975

- CSA; provides guidelines for composition and selection of CDC Boards of Directors. Comment deadline: Oct. 30; effective date: Oct. 30. 40FR44818.
- HEW/FDA:
- Color additives and certification, updating and corrections; comment deadline: Oct. 30; effective date: Dec. 1 40FR44812.
 - Proposed rules for contact lenses; regulatory marketing policy; comment deadline: Dec. 1. 40FR44844.
 - Proposed rules for performance standards for electronic products; comment deadline: Dec. 1. 40FR44846.
 - Notice; reopening of hearing on food for special dietary uses, Nov. 10. 40FR44857.
- Privacy Act; notices, systems of records, 40FR45122.
- PHS—Rules, special health career opportunity grants, effective date: Sept. 30. 40FR44814.
- Treasury/IRS; pension and welfare plans; annual information returns/reports comment deadline: Oct. 30. 40FR45133.

October 1, 1975

- Commerce/DIBA; continues short supply controls on petroleum and petroleum products; effective date: Sept. 29.
- FEC:
- Advisory opinions on campaign violations. 40FR45292, 3, 5.
 - Proposed allocation of campaign expenditures, comment deadline: Oct. 14.
- CSA; Privacy Act regulations, effective date: Sept. 27. 40FR45300, 328.
- EPA; notice; air pollution, standards of performance for stationary sources and hazardous pollutants. 40FR45227.
- SSA; proposed rules, resumption of payments to black lung beneficiaries, comment deadline: Oct. 31.

[From the NSCLC Washington Weekly Newsletter, Oct. 10, 1975]

HEW ISSUES REVISED REGULATIONS FOR ELIGIBILITY DETERMINATION UNDER TITLE XX—MEANS TEST POSTPONED FOR SOME

Pursuant to an agreement with the House Ways and Means Subcommittee on Public Assistance, James C. Corman (Cal.) Acting Chairman, HEW has issued revisions of regulations relative to the determination of eligibility for services under Title XX. [40FR45819 (see 40FR27351, Newsletters, Sept. 19, July 3 and April 18, 1975).] The revisions would allow persons receiving or eligible for services on a group basis under former Titles IV-A and VI of the Social Security Act to continue to receive these services under Title XX, provided they live in the area where the service is dispensed and that service is continued under Title XX, until March 31, 1976. Thus the imposition of the individual means test required under Title XX regulations is postponed for persons meeting the revised eligibility determinations in order to allow States and providers transition time regarding eligibility determinations and to allow HEW time to study whether some services should be provided on a group eligibility basis, rather than on an individual means basis.

In addition, the revised regulations provide for eligibility redetermination every six rather than three months; give the States until May 15, 1976, to establish a statistical file on service recipients; and allow the States to continue

those services provided for under Title XX which were formerly contracted under Titles IV—A & B, I, X, XIV, and XVI of the Social Security Act until March 31, 1976. Although the regulations were effective October 1, 1975, comments will be received until November 3, 1975, by Acting Administrator, Social and Rehabilitation Service, HEW, P.O. Box 2366, Washington, D.C. 20013.

DOLE-McGOVERN FOOD STAMP REFORM BILL INTRODUCED

The Dole-McGovern food stamp reform bill (S. 2451), introduced in the Senate October 2, contains important provisions for the elderly. The measure, co-sponsored by Agriculture and Forestry Committee members Sens. Robert Dole (Kan.) and George McGovern (S. Dak.), tightens standards for food stamp eligibility and simplifies program administration. The Agriculture Committee this week began hearings on the food stamp program and the various proposals for change.

The co-sponsors of S. 2451 state that the bill would cut program administrative costs by up to \$400-million yearly and greatly reduce waste, errors and administrative delay. Further, it would provide food stamps to all eligible persons and close loopholes through which those with too high incomes might become eligible for the stamps.

The bill establishes a standard deduction of \$125 per month of take-home income that is not counted in determining household income. If there are one or more elderly members, the household's standard deduction increases to \$150. The plan eliminates a variety of presently allowed deductions—such as a percentage of shelter and medical expenses, child care costs, alimony and support payments and mandatory union dues—while retaining a deduction for unusual casualty or disaster losses. A maximum ceiling is set on how much gross income households (according to size) can receive and still collect food stamps.

Another important feature of the Dole-McGovern bill is the elimination of the "purchase requirements" in the present law. Instead of being required to put down cash to purchase a fixed allotment of stamps at a price varying with income, eligible households would simply be given, at no cost, stamps equal to the difference between the allotment and the applicable price. This would attract eligible households which do not have the ready cash with which to purchase the stamp allotment, proponents claim and would at the same time reduce administrative costs.

Linked to the abolition of the purchase requirement is a provision fixing the purchase price for stamps at 30% of net income. Low-income households would not be hurt since the sizable standard deduction greatly reduces their net income figures.

The bill also eliminates automatic food stamp eligibility for public assistance recipients, reduces the maximum age for work registration from 65 to 60 and requires that all Social Security, SSI, AFDC and unemployment compensation recipients be notified of the food stamp program.

HEARING HELD ON DELAYS IN SOCIAL SECURITY APPEALS PROCESS

On October 3, the House Ways and Means Subcommittee on Social Security chaired by Rep. James A. Burke (Mass.) held a hearing concerning the delays and backlog in hearings and appeals on decisions rendered in Social Security cases. Testimony presented indicated that some 100,000 cases are pending before the SSA's Bureau of Hearings and Appeals, and the waiting period for a decision may extend well over a year. Those testifying before the Subcommittee attested to the following specific problems in the appeals process:

- Poor case development from the initial filing of an application to the initial denial, which results in a high rate of appeals and an approximately 50% reversal rate in initial unfavorable decisions in disability cases;

- Claimants receive incorrect, incomplete or conflicting information regarding their applications;

- Unexplained delays in the process and difficulty in determining the status of a case; and

- No specific or enforced time limits for determinations.

In testimony before the Subcommittee on Sept. 19, Social Security Commissioner Cardwell explained the Administration's approaches to the problems. The first is to increase the productivity of hearing officers and staff by increasing the staff of Administrative Law Judges (ALJ's). The second is to influence the

number of appeals being made through: (1) screening disability appeals; (2) informal remands; (3) face-to-face interviews and (4) reducing the allowable time period for appeals.

In order to remove the obstacles facing claimants, the following suggestions were proposed by witnesses other than Administration representatives:

- Initiate and improve training programs for district office staff and other personnel;

- Provide time limits for each stage of the hearing process by which a determination must be made;

- Establish a right to emergency or presumptive payments in the event that the time limits are not met which will not be considered overpayments;

- Provide claimants with regular reports as to the status of claims, as well as notification in writing of each decision;

- Increase personnel (ALJ's and staff);

- Remove distinction between hearing examiners and ALJ's;

- Reduce allowable time to file appeals from the present 6 months to 60 days or less;

- Quick payment for lost or stolen checks; and

- Ombudsmen in district offices.

The greatest disagreement occurred over the hiring of additional personnel and the reduction of appeal time. Advocates of training programs for lower level personnel felt that increasing the ALJ staff would not meet the real problem of poor case development. Those favoring a limited appeal period suggested it would increase efficiency while others felt it would dissuade claimants from filing appeals because of the complexities involved in understanding the appeals process.

A number of legislative proposals have been introduced to deal with the problems outlined above. [H.R. 8848, by Rep. B. F. Sisk (Calif.); S. 985, "Social Security Recipients Fairness Act," by Sen. Claiborne Pell (R.I.); H.R. 5742, 5743, "Social Security Recipients Fairness Act," by Rep. Edward P. Beard (identical to S. 985); H.R. 5276, "Social Security Rights Act of 1975," by Rep. John F. Seiberling (Ohio); H.R. 1514, by Sen. Robert Taft, Jr. (Ohio)]. The various remedies included in these bills: specific time limits, emergency benefits, lost, stolen, or delayed checks and limits of overpayment reductions.

INCREASES IN MEDICARE HOSPITAL DEDUCTIBLE AND CO-PAYMENT CHARGES—BILLS INTRODUCED TO COUNTERACT ACTION

In response to announced increases in Medicare costs, two bills have been introduced to freeze the Medicare hospitalization deductible and co-payment charges at their present 1975 level. Sen. Frank Church (Idaho) introduced S. 2446, and Rep. C. W. Bill Young (Fla.) introduced H.R. 9985, both on Oct. 2. Sponsors of S. 2446 stated that the elderly now pay more in out-of-pocket payments for Medicare than in the year before Medicare became law. In addition, Medicare still covers only 40 percent of the elderly's medical costs.

Social Security Commissioner James B. Cardwell announced that Medicare costs will be increased as of January 1, 1976. He stated that the increase is mandatory under existing law because Medicare costs are adjusted annually according to changes in the average per diem hospital rates covered by Medicare. The rates of increases will be as follows:

- Hospital deductible, first 60 days, \$92 to \$104;

- Hospital stay beyond 60 days up to 90 days, \$23 p/d to \$26 p/d;

- Post-hospital stay over 20 days in skilled nursing facility, \$11.50 p/d to \$13 p/d; and

- "Lifetime reserve" days (extra 60 days a beneficiary may use after 90 days of hospital care), \$46 p/d to \$52 p/d.

Commissioner Cardwell stated the increases result from the continuing rise in hospital costs which have been increasing 50 percent faster than the overall cost-of-living.

HOUSE COMMITTEE TO STUDY AID TO AGING

The full House Select Committee on Aging has authorized its newly assembled staff to determine how much federal aid the elderly receive and to prepare committee hearings on the subject.

The General Accounting Office (GAO) had earlier informed the House staff that it could not assemble reliable statistical data on federal programs for the elderly.

A House Committee staff working paper found that:

After questioning the Administration on Aging, the Office of Budget and Management and numerous federal departments and agencies, the GAO Manpower and Welfare Division had been unable to discover the extent or distribution of federal spending to assist the elderly. The GAO was further unable to learn what portion of the federal outlay went to pay administrative expenses rather than to aid the elderly directly;

There are no completed authoritative studies on federal aid to the elderly and no organized collections of current data on which to begin a new investigation;

Federal supervisors have been unable to obtain information on how states receiving federal grants have been using those funds;

Federal programs serving all age groups (such as food stamps, Medicaid, legal services, housing and revenue sharing) all say they cannot determine the dollar amount or percentage of their services going to the elderly. Several said that they assume that the elderly receive benefits in proportion to their 20% share of the general populace; and

Federal administrators do not agree on how to define "elderly". The Civil Service Commission provides early retirement in some categories at age 50; mandatory retirement is at age 70. Social Security grants reduced benefits at 62, full benefits at 65.

The staff report also found that GAO requests for data were "often handled almost cavalierly" by federal departments and agencies. Much information furnished the GAO was in the form of bare figures without adequate explanation or documentation, the report also stated.

WEEKLY CALENDAR OF EVENTS

Hearing on the pension problems of older women. House Select on Aging, Retirement Income and Employment Sub., Wm. J. Randall (Mo.) Chmn. Oct. 21—10 A.M.—Room TBA.

Roundtable discussion and meeting on national policy concerns for the frail elderly. Federal Council on the Aging Task Force on the Frail Elderly, Oct. 27, 28, during the Gerontological Society Meeting, Galt House, Louisville, Kentucky.

Hearings on NHI legislation. House Ways & Means, Health Sub. Dan Rostenkowski (Ill.) Chmn. Oct. 28—9 A.M.—1102 LHOB.

Field hearings on problems of housing confronting the rural, as well as urban elderly. House Aging, Housing & Consumer Affairs Sub., Edward R. Roybal (Ca.) Chmn. Oct. 11—Las Vegas, Nevada; Oct. 24 & 25—Los Angeles, Calif.

Oversight hearing—an overview of the problems of elderly—as given by Robert N. Butler, M.D., Washington Gerontologist and Psychiatrist. House Select on Aging, Full Committee, Wm. J. Randall (Mo.) Chmn. November 11—10 A.M.—Room TBA.

Mark up on comprehensive tax reform legislation with a focus on tax simplification in forms; domestic income of individuals. House Ways & Means, Al Ullman (Oreg.) Chmn. Oct. 20—23—9 A.M.—1102 LHOB.

Hearings on S. 1840—The Fair Credit Reporting Act Amendments. Senate Banking, Consumer Affairs Sub., Joseph R. Biden, Jr. (Del.) Chmn. Oct. 22, 23, 28, 29—10 A.M.—5302 DSOB.

Hearings on the subject of Women and Social Security. Senate Special Comm. on Aging, Frank Church (Idaho) Chmn. Oct. 22 & 23—10 A.M.—1114 DSOB.

Field hearings on H.R. 9155 and H.R. 808, providing for pension reform for State and local public service employees. House Education and Labor, Task Force on Welfare and Pension Plans of Labor Standards Sub., John H. Dent (Pa.) Chmn. Oct. 17, 18—Fed. Office Bldg., 40 Golden Gate, San Francisco; Oct. 31, Nov. 1—Chicago; Nov. 14 and 15—Waterbury, Conn.

Hearings on delays in Social Security Appeals Process. House Ways and Means, Social Security Sub., James A. Burke (Mass.) Chmn. Oct. 20—2 P.M., 2222 RHOB.

Meeting to consider pending business, including HR 7597—Employee Retirement Income Security Act. House Education and Labor, Carl D. Perkins (Ky.) Chmn. Oct. 29 and 30—9:30 A.M. 2175 RHOB.

CHECKLIST OF FEDERAL REGISTER ITEMS OF INTEREST TO THE ELDERLY

October 3, 1975

HEW/SRS; regulations on eligibility for Title XX services. Comment deadline Nov. 3 40FR45819
 Revocation-reduced applicability of regulations for social services public assistance programs 40FR45818
 HEW/Social Security; correction of OASDI regulations on contribution and benefit base after 1974 40FR45805
 VA; proposed regulations—eligibility for educational benefits. Comment deadline Nov. 3 40FR45853
 Disability rating determinations; Comment deadline Nov. 3. 40FR45854
 Justice; interim Voting Rights Act guidelines on use of minority languages in elections and voter registration. Comment deadline Jan. 2 40FR46080
 IRS; temporary regulations to ERISA: qualified joint and survivor annuities 40FR45810; (proposed rule 40FR45828—comment deadline Dec. 2).
 Minimum participation standards 40FR45812 (proposed rule 40FR45838—comment deadline Dec. 2).
 Labor/Pension Benefit Guaranty Corp.; regulations for disclosure and amendment of Privacy Act records, effective Sept. 27 40FR46054
 Community Services Admin; final regulations on inspection and copying of Freedom of Information records 40FR45820

October 6, 1975

HEW/Public Health Service; regulations on hospital provision of care for persons unable to pay 40FR46202

October 7, 1975

Labor/Manpower Admin; proposed definition of "economically disadvantaged individual" in determining areas of unemployment and underemployment 40FR46316
 Nat'l Institute of Health; establishment of Arteriosclerosis Specialized Center of Research Review Committee 40FR46339
 Notice of various NIH advisory committee meetings October 31—December 5: most open to public 40FR46339
 Social Security; Correction of regulation on hospital insurance benefits for posthospital-extended care 40FR46309

October 8, 1975

Labor/OSHA; proposed standards for toxic substances 40FR47261
 HUD; Mortgage Credit, changes maximum interest rate from 8½ to 9 percent effective Sept. 2, 1975 40FR47105
 Privacy Act; Rules and notices: CSA 40FR47419; HUD 40FR47435; Postal Service 40FR47422; and HEW 40FR47405
 HEW; Meeting; Health Insurance Benefits Advisory Council: October 30, 31 40FR47165

October 9, 1975

HUD; Emergency Home Owner's Relief Program; Proposed rules; Comment deadline: Nov. 12 40FR47694
 Postal Service; Postage rate and fees: Proposed changes, effective date for temporary changes: Dec. 28 40FR47589
 HEW/SSA; Supplemental Security Income; Regulations on reconsideration and continuation of payment during appeal, effective date: June 19 40FR47487
 Office of Employee Benefits Security; interpretive release; employment retirement security 40FR47491
 FDA, Medical Device Good Manufacturing Practice Draft Regulations; Meetings in four locations: Nov. 3, 4, 6, 10 40FR47530

[From the NSCLC Washington Weekly Newsletter, Oct. 17, 1975]

NEW REGULATIONS ISSUES ON SSI PAYMENTS

The Social Security Administration has published two sets of final regulations for supplemental security income (SSI) payments. The new regulations, effective immediately, set procedures for appealing SSI decisions and for administrative adjustment of overpayment or underpayment of SSI benefits.

The new appeals procedure (40FR47487) shortens the time during which a person receiving SSI payments can ask for a review of an unfavorable decision and still keep his payments at their original level. An SSI recipient still has thirty days to appeal after receiving a notice that his benefits are to be reduced, suspended, or terminated. However, under the new regulations, the adverse decision will go into effect unless the recipient files an appeal within ten days of receiving the notice. Those filing after ten days have elapsed will have full benefits restored only after a favorable decision from administrative reconsideration.

The new regulations also require that the official conducting any reconsideration proceeding, including case review and informal conference, must not have been involved in reaching the original decision. The new procedures also allow a formal conference with an SSA representative within 15 days in all non-medical cases. The SSI recipient or his representative will be permitted to review the evidence on record before case review.

The new regulations on adjustment of overpayment and underpayment (40FR47761) require that money owed the recipient because of past underpayment be first subtracted from any overpayment that the recipient might have received. Overpayments are recovered by withholding a part of future monthly SSI payments or, if the recipient requests, are taken from regular social security cash benefits. The recipient is entitled to notice and an opportunity to appeal and request waiver of repayment.

Repayment may be waived where the recipient was not at fault in the error, where the amount involved is too small to collect economically, or where a recipient has changed his position in anticipation of receiving the overpayment.

The regulations also deny payment of a deceased recipient's back benefits to his estate or to a spouse who is not also eligible for SSI or who had been separated from the deceased for less than six months at the time of death.

BILLS INTRODUCED TO INCREASE MEDICARE LIFETIME RESERVE DAYS AND TO LIMIT DEDUCTIBLES ON EQUIPMENT

Senator Frank Church (Idaho) introduced two bills on October 6; S. 2473, The Medicare Hospitalization Improvements Act of 1975, and S. 2474, to eliminate the double deductible charge on medical equipment.

At present, medicare (Part A) helps to pay for up to 90 days of hospitalization (first 60 days, \$92 deductible; next 30 days, \$23 per day co-insurance). In addition, there is a 60-day lifetime reserve for individuals who require more than 90 days hospitalization, with a \$46 per day co-insurance payment.

S. 2473 would increase the lifetime reserve days from 60 to 120, thereby increasing the total of possible covered days from 150 to 210 (first 90, plus 120 lifetime reserve). The bill would also reduce the daily co-insurance charge for the lifetime reserve from one-half to one-fourth of the hospital deductible (\$46 to \$23).

Senator Church stated that in 1976 150,000 medicare beneficiaries are expected to be hospitalized from 61 to 90 days, 40,000 will draw on their lifetime reserves, and 5,000 to 10,000 will exhaust their reserve.

S. 2474 would prevent the charging of two deductibles for one piece of durable medical equipment under Part B of medicare. At present, a single piece of equipment is subject to two deductible charges in two different years. This results because medicare provides for reimbursement on an installment basis for purchases over \$50, and also requires an annual deductible for each year. Thus, if an individual receives installment payments for the same purchase in two different years, he may be charged a deductible for each year. The limitation of one deductible would apply to both rented and purchased equipment.

FEDERAL COUNCIL ON THE AGING ROUNDTABLE

The Federal Council on the Aging will conduct a roundtable discussion on "Developing National Policy for Services to the Frail Elderly" on Monday, October 27, at the Gerontological Society's annual meeting in Louisville, Kentucky (see calendar).

The Council defines "frail elderly" as older persons, generally 75 or over, who have physical, psychological or social debilities requiring some form of regular intervention by society. The Council approaches the needs of this group as primarily social rather than medical, and is focusing initially on the elderly who do not need to be in 24-hour health care facilities. The Council feels that care for

the frail elderly should be provided without regard to individual financial resources.

For further information on the conference or the Council's schedule for the rest of 1975, call (202) 245-0441.

HEW ISSUES FINAL REGULATIONS DEFINING LEVEL OF CARE FOR MEDICARE EXTENDED CARE BENEFITS

On June 3, HEW issued proposed regulations redefining the level of care required for extended care benefits under Medicare (40FR23973) (see Newsletter, June 6). HEW has now issued final regulations which will be effective Nov. 24, 1975. A summary of comments received and explanations of Department action taken are included (40FR43895).

Excepting minor change, the final regulations remain the same as the proposed regulations. In its summary of comments and explanations the Department: Interpreted "daily" to mean every day or every weekday, thus disallowing coverage for services available less than 5 days a week; declined to consider the availability of funds to pay for services furnished in alternative settings as a factor in determining whether as a "practical matter" the care required can only be furnished on an inpatient basis in a skilled nursing facility; and retained the factors of availability and feasibility of using more economical alternative facilities and services in determining what care is practical.

The Department also indicated that a study would be conducted to determine whether to apply the skilled nursing guidelines to home health benefits.

NSCLC MOVING; NO NEWSLETTER ON OCTOBER 31

NSCLC will be moving to new offices on October 31. The new address will be 1200 15th Street, N.W., Suite 500, Washington, D.C. 20005. The telephone number will remain the same. Because of the move and consequent production difficulties, no Newsletter will be issued on Friday, October 31.

HEARINGS ON WOMEN AND SOCIAL SECURITY

The Senate Special Committee on Aging, chaired by Sen. Frank Church (Idaho) will hold hearings on Women and Social Security on Oct. 22 and 23 (see Newsletter, 10/2/75). On October 22, the hearing will consist of a panel and round-table discussion composed of the following participants: Hon. Martha W. Griffiths (former Congresswoman from Mich., Chairperson of the Committee on Homemakers, National Commission on Observance of International Women's Year); Harold L. Shephard, Ph.D., (Principal Research Scientist, American Institutes for Research); Dr. Inabel Lindsey, (former Dean of the School of Social Work at Howard University and a trustee for the National Urban League); Ms. Tish Sommers, (Coordinator, Task Force on Older Women, National Organization for Women); Hon. Bella S. Abzug, (U.S. Congresswoman from N.Y.); and Mr. Stephen C. Wiesenfeld, (Plaintiff in recent Supreme Court Decision, *Weinberger v. Wiesenfeld*).

On Oct. 23, two witnesses, Hon. James B. Cardwell, (Commissioner, Social Security Administration) and Hon. Arthur S. Flemming, (Chairman, U.S. Commission on Civil Rights) will testify first with a panel discussion following. The members of the panel will be: Dr. Margaret Long Arnold, (Chairperson, Subcommittee on Aging and Aged Women, National Commission on Observance of International Women's Year, and past President of the General Federation of Women's Clubs); Ms. Arvonne Fraser, (Legislative Chair and past President of the Women's Equity Action League); and Hon. Robert M. Ball, (former Commissioner of Social Security Administration and Scholar in Residence at the Institute of Medicine, National Academy of Sciences).

WEEKLY CALENDAR OF EVENTS

Oversight hearings on improving SSI for aged, blind and disabled. House Ways & Means, Oversight Sub., Sam Gibbons (Fla.) Chmn, Oct. 20—10 A.M. (room TBA).

Oversight hearings on rate increase into fed. employees' group health plan. House Post Office & Civil Service, Retirement Sub., Richard C. White (Texas) Chmn, Oct. 20, 21, 23, 28—9 A.M., 304 CHOB.

Mark up on survivors' annuities (H.R. 2516). House Post Office & Civil Service,

- Retirement Sub., Richard C. White (Texas) Chmn. Nov. 3—2:30 P.M., 304 CHOB.
- Mark up on H.R. 9045, liberalizing provisions related to payment of disability and death pension—dependency indemnity compensation. House Veterans' Affairs, Compensation Sub., G. V. Montgomery (Miss.) Chmn. Oct. 23—9 A.M. 334 CHOB.
- Hearings on IRS & consumer problems in the sale of individual retirement accounts. House Ways & Means, Oversight Sub., Charles A. Vanik (Ohio) Chmn. Nov. 7 (room and time TBA).
- Hearings on delays on Social Security Appeals Process. House Ways & Means, Social Security Sub., James A. Burke (Mass.) Chmn. Oct. 20—2 P.M. 2222 RHOB.
- Meeting to consider pending business, including H.R. 7597—Employee Retirement Income Security Act. House Education & Labor, Carl D. Perkins (Ky.) Chmn. Oct. 29, 30—9:30 A.M. 2175 RHOB.
- Hearings on a review of the Food stamp program and consideration of possible reforms. Senate Agriculture, Agricultural Research Sub., James B. Allen (Ala.) Chmn. Oct. 20—9 A.M., 6202 DSOB.
- Hearings on H.R. 287 and similar legislation providing compensation to victims of crime. House Judiciary, Criminal Justice Sub., William L. Hungate (Mo.) Oct. 28, Nov. 4 (room and time TBA).
- Hearing on the pension problems of older women. House Select on Aging, Retirement Income and Employment Sub., Wm. J. Randall (Mo.) Chmn. Oct. 21—10 A.M.—2212 RHOB.
- Roundtable discussion and meeting on national policy concerns for the frail elderly. Federal Council on the Aging Task Force on the Frail Elderly, Oct. 27, 28 (during the Gerontological Society Meeting) Galt House, Louisville, Kentucky.
- Hearings on NHI legislation. House Ways & Means, Health Sub. Dan Rostenkowski (Ill.) Chmn., beginning Nov. 5 (changed from Oct. 28) 9 A.M. 1102 LHOB.
- Field hearings on problems of housing confronting the rural as well as urban elderly. House Aging, Housing & Consumer Affairs Sub., Edward R. Roybal (Ca.) Chmn. Oct. 24 & 25—Los Angeles.
- Oversight hearing—an overview of the problems of the elderly—as given by Robert N. Butler, M.D., Washington gerontologist and psychiatrist. House Select on Aging, Full Committee, Wm. J. Randall (Mo.) Chmn. Nov. 11—10 A.M.—(room TBA).
- Mark up on comprehensive tax reform legislation with a focus on tax simplification in forms; domestic income of individuals. House Ways & Means, Al Ullman (Oreg.) Chmn. Oct. 20—23—9 A.M. 1102 LHOB.
- Hearings on S. 1840—The Fair Credit Reporting Act Amendments. Senate Banking, Consumer Affairs, Sub., Joseph R. Biden, Jr. (Del.) Chmn. Oct. 22, 23, 28, 29—10 A.M. 5302 DSOB.
- Hearings on the subject of Women and Social Security. Senate Special Comm. on Aging, Frank Church (Idaho) Chmn. Oct. 22 & 23—10 A.M., 1114 DSOB.
- Field hearings on H.R. 9155 & H.R. 808, providing for pension reform for State & local public service employees. House Education & Labor, Task Force on Welfare & Pension Plans of Labor Standards Sub., John H. Dent (Pa.) Chmn. Oct. 31, Nov. 1—Wheaton, Ill., County Complex; Nov. 14 & 15—Fed. Office Bldg., 135 Grant St., Waterbury, Conn.

CHECKLIST OF FEDERAL REGISTER ITEMS OF INTEREST TO THE ELDERLY

October 10, 1975

- HEW/SSA: regulations on adjustment of overpayment and underpayments of SSI benefits. 40FR47761.
- Labor/Employee Benefits Security Office; proposed form and instructions for ERISA plan descriptions; Comment deadline: Nov. 9. 40FR48095.
- Pension Benefit Guaranty Corp; correction of rules on guaranteed benefits. 40FR47765.
- HEW; correction of notice of President's Biomedical Research Panel Meeting. 40FR47817.
- Legal Services Corp; open Committee meetings By laws and regulations (Oct.

19-20); Appropriations and Audit (Oct. 16). 40FR47838.
 Council on Wage and Price Stability; proposed rules for investigations of inflationary economic activities. 40FR47801.

October 13, 1975—No Federal Register

October 14, 1975

HEW/Federal Council on Aging; notice of opening meeting of Task Force on Frail Elderly, October 27-28. 40FR48160.

VA; proposed rule exempting income from domestic volunteer service programs; comment deadline: Nov. 10. 40FR48143.

HUD/Housing Production & Mortgage Credit; Notice of proposed rulemaking on mobile home consumers information; comment deadline: Nov. 28. 40FR48141.

HUD; final regulations on Freedom of Information disclosure, effective Oct. 3. 40FR48123.

HEW/NIH; notice of location change for October 28 meeting of Cancer Control and Rehabilitation Advisory Committee. 40FR48163.

Consumer Product Safety Commission; regulations on oral presentations on consumer product safety rules; comment deadline: Nov. 13. 40FR48122.

October 15, 1975

IRS; temporary regulations and notice of rulemaking on the effect of Social Security increases on qualified retirement plan benefits; Temporary regulations. 40FR48345; proposed rulemaking—Comment deadline: Dec. 15. 40FR48361.

HEW/SRS; notice of states to certify adequacy of fiscal year '76 allotment by Nov. 15. 40FR48387.

October 16, 1975

WIN; Notice of revised limits of entitlement. 40FR48544.

Treasury/IRS; proposed rules, use of custodial accounts and annuity contracts under qualified pension, profit-sharing and stock bonus plans, comment deadline 12/15/75. 40FR48517.

Proposed rules, non-bank trustees of pension and profit-sharing trusts benefiting owner-employees. Comment deadline: 12/15/75. 40FR48514.

Temporary regulations; non-bank trustees of pension and profit-sharing trust benefiting owner-employees. 40FR48508.

HEW/NIH Meetings;

National Committee on Diabetes, Nov. 13. 40FR48542.

High Blood Pressure Work Group, Nov. 6. 40FR48541.

Arterio Sclerosis and Hypertension Advisory Committee, Natl. Heart and Lung Institute, Nov. 20. 40FR48540.

National Advisory Neurological and Communicative Disorders and Stroke Council, 11/20-22. 40FR48541.

National Heart and Lung Advisory Council, 12/4, 5. 49FR48542.

National Commission on Arthritis and Related Musculoskeletal Diseases, 11/8-11/12. 40FR48542.

[From the NSCLC Washington Weekly Newsletter, Oct. 24, 1975]

LEGAL SERVICES APPROPRIATION SIGNED—PRESIDENT AND EXECUTIVE VICE
 PRESIDENT OF BOARD CHOSEN

On October 21st President Ford signed the bill which contains an \$88-million appropriation for the Legal Services Corporation (H.R. 8121, the State, Commerce, Justice Appropriation Bill). The signing occurred just one week after the Legal Services Corporation became legally independent of the Community Services Administration. The Corporation has chosen Thomas Ehrlich, Dean, Stanford Law School, as the President of the Corporation. E. Clinton Bamberger, Jr., Dean, Catholic University Law School, and a former Director of the OEO Legal Services Program was named Executive Vice President of the Corporation. Ehrlich will begin full time on January 1, 1976; Bamberger will assume his office on November 17, 1975. The Corporation has commissioned a study of the back-up centers and support services. At its next meeting, November 6 and 7, the Corporation Board will focus the Corporation's authority to fund specialized legal services, primarily litigation service centers.

HOUSE HEARINGS TO BE HELD ON BACK-UP CENTER AMENDMENT

On October 29 and 31, (see calendar) the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee, Robert W. Kastenmeier (Wis.) Chairman, will hold hearings on H.R. 7005 (introduced by Rep. Kastenmeier) which would amend the Legal Services Corporation Act to authorize the Legal Services Corporation to support legal service back-up centers by grant or contracts. A last-minute amendment to the bill which created the Corporation had prohibited such support. The National Senior Citizens Law Center is among the back-up centers which would benefit from the Kastenmeier bill. Presently the back-up centers are funded through March 31, 1976. Funding beyond the date is uncertain.

Those testifying at the hearing are: Henry A. Freedman, Director, Center on Social Welfare Policy and Law, Chairman Legislative Committee, O.L.S. B.U.C. (back-up center organization); James A. Lanigan, Directing Attorney, Washington, D.C. office, National Senior Citizens Law Center; Gregory R. Dallaire, Chairman, Project Advisory Group, Director, Seattle-King County Legal Services; Dean Roger C. Cramton, Chairman, Board of Directors, Legal Services Corporation (Dean, Cornell University Law School); F. William McCalpin, Chairman, American Bar Association, Standing Committee on Legal Aid and Indigent Defendants; Daniel A. Reznick, President, The District of Columbia Bar (Partner, Arnold & Porter, Washington, D.C.); Arthur H. West, President, New Jersey Farm Bureau, Representative, American Farm Bureau; Bernard Veney, Director, National Clients Council; John G. Brooks, Senior Vice President, National Legal Aid and Defender Association.

SSI FINAL REGULATIONS ON INCOME AND RESOURCES ISSUED

The Social Security Administration last week published regulations on the calculation of income and resources of Supplemental Security Income (SSI) recipients (40FR48911).

Under the regulations an individual's "income" takes in all earned and unearned income of the individual and eligible spouse, including monies as well as property and services convertible into money for basic needs. Unearned income includes payments from annuities, pensions, disability benefits, workmen's and unemployment compensation and social security. Also included are gifts, support and alimony, inheritances and certain life insurance proceeds.

The value of medical care or services furnished to a beneficiary by a third-party, social services and income tax refunds do not count as income. Other deductions from income include:

- State or local supplemental assistance for the needy;
- grants, scholarships and fellowships covering tuition or fees;
- home produce for personal consumption;
- unexpected or infrequent income (up to \$60 of unearned and \$30 of earned income per quarter);
- payments received for care of foster children;
- one-third of child support payments;
- \$60 per quarter of income not otherwise excluded or based on need; and
- \$195 per quarter of earned income, plus half the earned income above that amount.

An aged, blind, or disabled person without a spouse may have resources worth up to \$1,500 and remain eligible for SSI. An eligible married couple can have a total of \$2,250 in resources, whether or not both spouses are eligible. In determining resources available to SSI applicants, the Social Security Administration excludes:

- the market value of a home (including land and building), up to \$25,000 (\$35,000 in Alaska and Hawaii), based on current local assessed valuation;
- the market value of household goods and personal effects, up to \$1,500 (excluding wedding and engagement rings and medically required equipment);
- the market value of an automobile, up to \$1,200. If used for employment purposes, receiving medical treatment, or transporting a handicapped person, the car is exempt regardless of value;
- property necessary for self-support; and
- the cash surrender value of life insurance, unless total face value is over

\$1,500. Term and burial insurance are not considered as resources. These regulations were effective October 20.

ADMINISTRATION UNVEILS FOOD STAMP BILL

The National Food Stamp Reform Act (S. 2357), the Ford Administration's long-awaited proposal for changes in the food stamp program, was introduced October 21 by Senators Talmadge (Ga.), Buckley (N.Y.), and Dole (Kan.). An accompanying Presidential message claimed that enactment of S. 2357 would reduce program costs by over \$1.2-billion annually by making the program easier to administer and limiting eligibility to households with net incomes below the poverty line. The bill joins several other proposals now pending before the Senate Committee on Agriculture and Forestry.

The Administration bill limits eligibility to households whose net incomes do not exceed the Office of Management and Budget's poverty line (\$5,050 for a family of four). A standard monthly income deduction of \$100, or \$125 if a household member is age 60 or over, is excluded from net income. Therefore, an eligible four-member household could have a top total yearly income of \$6,250 or \$6,550, depending on its age composition. The Administration proposal includes as income all taxes and other mandatorily withheld payments from wages, unlike an earlier bill (S. 2451) sponsored by Senators McGovern (S. Dak.) and Dole (Newsletter, Oct. 10, 1975).

The maximum age for work registration is reduced from 65 to 60 in both the Administration and Dole-McGovern bills. The Administration bill sets a uniform coupon purchase price at 30% of household net income but does not eliminate the purchase requirement. The Dole-McGovern plan uses a 30% of net income discount to calculate the value of the stamp benefit a household would receive, but would issue that bonus value without requiring a cash-down purchase. Households receiving public assistance or SSI payments lose their automatic eligibility for food stamps under both plans.

The Administration bill authorizes the Secretary of Agriculture to require food stamp recipients to report income monthly, present photo identification and countersign stamp coupons at the issuing office and the retail food store. The legislation also contains greater penalties for abuse or mismanagement of the stamp program.

The Senate Agriculture Committee will resume hearings on food stamp legislation in November.

CABINET POST ON AGING PROPOSED

Legislation has been introduced in Congress to create a Cabinet level Department of Aging to coordinate federal and state programs of aid to the elderly. Under H.R. 10126, introduced by Rep Mario Biaggi (N.Y.) on October 9, the new Department would assume the functions presently handled by the Administration on Aging; it would administer grant programs of the Older Americans Act, provide technical assistance to state and local programs and serve as a clearinghouse for information on the problems of the elderly. The bill has been referred to the Committee on Government Operations.

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WEEKLY CALENDAR OF EVENTS

Hearings on the General Revenue Sharing Act of 1972. House Comm. on Government Operations, Intergovernmental Relations and Human Resources Sub., L. H. Fountain (N.C.) Chmn. Oct. 29 & 30—9:30 A.M., 2247 RHOB.

Hearings on problems facing the elderly. House Select on Aging, Full Committee, Wm. J. Randall (Mo.) Chmn.: Oversight hearings on government programs for elderly as given by Robert N. Butler, M.D., Washington gerontologist and psychiatrist, Nov. 11—10 A.M., 2212 RHOB; hearings on the percentage of Revenue Sharing which goes toward programs for the aged. Nov. 18—10 A.M., 2212 RHOB.

- Hearings on proposed HEW regulations on proprietary home health. Senate Special Comm. on Aging, Long-term Care Sub., Frank E. Moss (Utah) Chmn. Oct. 28—10 A.M. 6202 DSOB.
- Oversight hearings on rate increase into fed. employees' group health plan. House Post Office & Civil Service, Retirement Sub., Richard C. White (Texas) Chmn. Oct. 28—9 A.M., 304 CHOB.
- Mark up on survivors' annuities (H.R. 2516). House Post Office & Civil Service, Retirement Sub., Richard C. White (Texas) Chmn. Nov. 3—2:30 P.M., 304 CHOB.
- Hearings on IRS & consumer problems in the sale of individual retirement accounts. House Ways & Means, Oversight Sub., Charles A. Vanik (Ohio) Chmn. Nov. 7—10 A.M. (room TBA.)
- Meeting to consider pending business, including H.R. 7597—Employee Retirement Income Security Act, House Education & Labor, Carl D. Perkins (Ky.) Chmn. Oct. 29, 30—9:30 A.M. 2175 RHOB.
- Hearings on H.R. 287 and similar legislation providing compensation to victims of crime. House Judiciary, Criminal Justice Sub., William L. Hungate (Mo.) Chmn. Nov. 4 (room and time TBA.)
- Roundtable discussion and meeting on national policy concerns for the frail elderly. Federal Council on the Aging Task Force on the Frail Elderly, Oct. 27, 28 (during the Gerontological Society Meeting) Galt House, Louisville, Kentucky.
- Hearings on NHI legislation. House Ways & Means, Health Sub. Dan Rostenkowski (Ill.) Chmn., beginning Nov. 5 (changed from Oct. 28) 9 A.M. 1102 LHOB.
- Field hearings on problems of housing confronting the rural as well as urban elderly. House Aging, Housing & Consumer Affairs Sub., Edward R. Roybal (Ca.) Chmn. Oct. 25—Los Angeles.
- Hearings on S. 1840—The Fair Credit Reporting Act Amendments. Senate Banking, Consumer Affairs Sub., Joseph R. Biden, Jr. (Del.) Chmn. Oct. 28, 29—10 A.M. 5302 DSOB.
- Field hearings on H.R. 9155 & H.R. 808, providing for pension reform for State & local public service employees. House Education & Labor, Task Force on Welfare & Pension Plans of Labor Standards Sub., John H. Dent (Pa.) Chmn. Oct. 31, Nov. 1—Wheaton, Ill. County Complex; Nov. 14 & 15—Fed. Office Bldg., 135 Grant St., Waterbury, Conn.
- Hearings on H.R. 7005. House Judiciary Committee, Sub. on Courts, Civil Liberties & the Administration of Justice, Robert W. Kastenmeier (Wis.) Chmn. Oct. 29 & 31—10 A.M., 2226 RHOB.
- Hearings on H.R. 8822, allowing full-year retirement credit to U.S. Commissioners. House Post Office & Civil Service, Retirement Sub., Richard C. White (Tex.) Chmn. Nov. 4 & 6—9 A.M., 304 CHOB.
- Oversight hearings on funding of retirement credit, cost-of-living adjustments, disability & legis. branch retirement. House Post Office & Civil Service, Retirement Sub., Richard C. White (Tex.) Chmn. Nov. 11—9 A.M. 304 CHOB.
- Joint Hearings on proprietary issues and standards of home health care service. Senate Aging, Long-Term Care Sub., and House Aging, Health & Long-Term Sub., John E. Moss (Ca.) and Claude Pepper (Fla.) Chmn. Oct. 28—9:30 A.M. 62-2 DSOB.
- Hearings on food stamps and the elderly. Senate Aging, Frank Church (Idaho) Chmn. Nov. 3—10 A.M. (room TBA.)
- Hearings on S. 1926 to extend and revise programs establishing health maintenance organizations. Senate Labor, Health Sub., Edward M. Kennedy (Mass.) Chmn. Nov. 11, 26—9:30 A.M. 4232 DSOB.
- Hearings on the impact of rising energy costs on the elderly. Senate Aging, Lawton M. Chiles, Jr. (Fla.) Chmn. Nov. 7—10 A.M., (room TBA.)
- Mark up on H.R. 9650, no-fault auto insurance. House Commerce, Consumer Protection Sub., Lionel Van Deerling, (Cal.) Chmn. Oct. 28-30, Nov. 4 & 5—10 A.M., 2218 RHOB. (rooms for Oct. 29, 30 TBA.)

CHECKLIST OF FEDERAL REGISTER ITEMS OF INTEREST TO THE ELDERLY

October 17, 1975

HEW/SSA; notice of SSI study group public meetings: October 30 through

Dec. 19 40FR48707
 HEW/Public Health Service; proposed rulemaking on designation and funding of health systems agencies. Comment deadline: Nov. 17 40FR48801
 Office of Federal Register; table of Freedom of Information publications through Oct. 10, 1975 40FR48899
 Quarterly index of Freedom of Information requirements 40FR48748
 IRS/correction of temporary ERISA regulations on commencement of qualified trust benefits 40FR48679

October 20, 1975

HEW/SSA; regulations on income and resources of SSI recipients 40FR48911
 Proposed SSI rules on treatment of support and maintenance as unearned income. Comment deadline: Nov. 19 40FR48947
 HEW; notice of Federal Council on the Aging, Senior Services Committee open meeting: Nov. 6-7 40FR48959

October 21, 1975

HEW/PHS; final regulations on National Heart and Lung Institute grants 40FR49090
 Pension Benefit Guaranty Corp.; adoption of Privacy Act procedures 40FR49288
 Office of the Federal Register; table of Privacy Act publications up to October 10, 1975 40FR49289

October 22, 1975

Federal Reserve System; regulations prohibiting discrimination by sex or marital status in credit transactions; effective: October 28 40FR49298
 HUD; final regulations for exemption from local rent control 40FR49318
 FTC; trade regulations on mail order merchandise 40FR49491
 Labor; notice of open meeting of Advisory Council on Employee Welfare and Pension Benefit Plans: Nov. 5-6 40FR49422
 HEW; National Institutes of Health; notice meetings for various advisory councils; mostly open; some closed: No. 10-Dec. 10 40FR49381

October 23, 1975

VA; proposed changes in veterans' benefits to widows and widowers; comment deadline: November 24. 40FR49580.
 HEW; meeting, National Advisory Council on Alcohol Abuse and Alcoholism. Nov. 17-18. 40FR49591.
 NIH; meeting; National Institute of Arthritis, Metabolism and Digestive Diseases. Oct. 24 & 25. 40FR49595.
 OMB; deferral reports; HEW, Treasury. 40FR49739.

(These newsletters are prepared pursuant to a grant from the administration on Aging and the Community Services Administration, Washington, D.C. The opinions expressed herein are those of the National Senior Citizens Law Center Staff and should not be construed as representing the opinion or policy of any agency of the U.S. Government.)

[From the NSCLC Newsletter, July 1975]

THE FEDERAL AGE DISCRIMINATION IN EMPLOYMENT ACT REVISITED

As this article will demonstrate, the Federal Age Discrimination in Employment Act (hereafter the "Act") is, to some extent, an idea whose time has apparently not yet come. Some mathematical calculations suggest one important reason for this state of affairs. Although Congress, effective May 1, 1974, increased the appropriation authorization from three million to five million dollars, 29 U.S.C. § 634, the actual appropriation was considerably more negatively: the fiscal 1975 Labor/HEW Appropriations Bill, signed into law December 7, 1974 (P.L. 93-517) and the fiscal 1975 Supplemental Appropriations Bill (H.R. 16900) provided a bare two million dollars for enforcement of the Act. According to the Department of Labor's Report to Congress concerning its enforcement activities during 1973, at least fifty million persons are now theoretically protected under the Act, resulting in a total of four cents appropriated for every protected individual. Clearly, to the extent the Department of Labor could be accused of failing to enforce the Act vigorously, blame should be placed on its doorstep cautiously.

Although anyone who has ever read an article dealing with the Act, or any informational material relating thereto, has already been treated to the fash-

lonable "overview," a brief one will be set forth here to accommodate the tyro. The Act applies to employers in industries affecting commerce who have 20 or more employees, to employment agencies, to labor organizations, to states, political subdivisions and agencies thereof, and to the federal government. 29 U.S.C. § 623, 630, 633(a). With respect to federal government employees, enforcement responsibility is resposd in the Civil Service Commission, rather than the Department of Labor. 29 U.S.C. § 633 (a) (b). Discrimination because of age in every possible form is prohibited, including hiring, discharge, compensation, terms and conditions of employment, classification or referral for employment and advertisements indicating or implying a preference based upon age. 29 U.S.C. § 623.

Discrimination is permitted if the discriminator can carry the burden of proving that age is a bona fide occupational qualification. 29 U.S.C. § 623(f) (1); for example, Marlon Brando could be refused the role of Huckleberry Finn because of his age. See 29 C.F.R. § 860.102(e). Ostensible discrimination may also be lawful if it is the result of differentiation criteria applied without regard to age as such. 29 U.S.C. § 623(f) (1). For example, the Pittsburgh Steelers are not guilty of age discrimination, though their players include few, if any, people within the protected group. 29 C.F.R. § 860.103(f) (1) (ii).¹ The Secretary of Labor interprets the Act as sanctioning a truly neutral employee test, 29 C.F.R. § 860.104(b), but there is evidence that the use of any test would be inherently discriminatory.²

Under the Act, an employee can be discharged or disciplined for "good cause" and it is not unlawful "to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan." 29 U.S.C. § 623(f) (2), (3). Unfortunately, the protections of the Act are "limited to individuals who are at least 40 years of age but less than 65 years of age." 29 U.S.C. § 631.

Procedurally, a broad panoply of remedies are available, including judicially ordered employment, reinstatement, promotion, and the award of back pay, following civil action by either the aggrieved person or the Department of Labor. 29 U.S.C. § 626(b), (c). Federal/state cooperation is provided for and if an appropriate state agency has received a written and signed statement of the alleged discrimination ("by registered mail"), 60 days must elapse before suit by the aggrieved person or by the Secretary. 29 U.S.C. § 633(b). Suit by an aggrieved individual is also subject to a 60-day waiting period which begins to run following notice to the Secretary of an intent to file such action; the notice must be given within 180 days after the alleged discriminatory practice (300 days if a state agency has entered the picture), and these notice and time requirements have been construed to be jurisdictional. 29 U.S.C. § 626(d); *Powell v. Southwestern Bell Telephone Company*, 494 F.2d 485 (5th Cir. 1974); *Burgett v. Cudahy Co.*, 361 F. Supp. 617 (D. Kans. 1973); *Gebhart v. GAF Corporation*, 59 F.R.D. 504 (D.D.C. 1973).

One of the themes of this article is that the Act has, to some extent, been greeted with judicial inhospitality and the procedural formalities are a good

¹ In *Stringfellow v. Monsanto*, 320 F. Supp. 1175 (W.D. Ark. 1970), an employer, because of economic circumstances, was forced to substantially curtail the scope of its operations and to reduce its work force. A number of former employees who had been dismissed brought suit under the Act and the evidence showed that the average age of the various categories of employees was lower after the reduction in force. The evidence further demonstrated, however, that the employer had formulated comprehensive evaluation criteria for the purpose of retaining the employees who had demonstrated the highest performance. The court held that the employer was in compliance with the Act because age played no role in the evaluations.

² See ARVEY and MUSSIO, "Test Discrimination, Job Performance and Age," *INDUSTRIAL GERONTOLOGY* (Winter 1973), National Council on Aging. The authors conducted a test validation study to relate job performance and test scores on a sample of clerical workers. 34 percent of which were 24 years or under and 35 percent of which were 50 years or over. They concluded that if any of the tests were used for selection purposes without considering the applicant's age, unfair test discrimination would occur.

³ On February 27, 1975 Senator Fong from Hawaii introduced S. 871 which would extend the protections of the Act "to individuals who are 40 years of age or older." A hopeful sign was the bill's bipartisan co-sponsorship, which included Senators Brock, Church, Domenici, Fannin, Hansen, Randolph, Stafford, and Williams. Senator Fong's identical bill introduced in the 93rd Congress on September 28, 1973, S. 2490, did not have such enthusiastic endorsement. It did, however, have the endorsement of the Section on Family Law of the American Bar Association, and the concept of eliminating mandatory retirement at any arbitrarily selected age has been recommended by the Committee on Aging of the American Medical Association. For a cogent policy statement see the remarks of Senators Fong and Williams in connection with the introduction of S. 871. CONG. REC. 2749-2751 (February 27, 1975).

point of departure because through judicial construction they have become surrounded with pitfalls. For example, there is nothing in the Act expressly mandating that the 60 day notice to the Secretary 180 days following the discriminatory practice be jurisdictional rather than directory. A liberal interpretation of the Act could lead to the alternative conclusion without doing violence to the language, although it is conceded that the extant interpretation does comport with legislative policy favoring conciliation. See 29 U.S.C. § 626(c); *Burgett v. Cudahy Co.*, *supra*, 361 F. Supp. at 621.⁴ Given the fact the notice requirements are jurisdictional, the decision in *Powell v. Southwestern Bell Telephone Company*, *supra*, 494 F.2d 485, went further and imposed a severe ritualistic requirement. After the Department of Labor received a written complaint of age discrimination it investigated and notified the complainant it could not substantiate the claim and would take no further action. Within 180 days of the alleged discrimination, she sent a letter to the Department of Labor indicating her wish that the Department bring suit in her behalf. Much later, and after the 180 days period had elapsed, the Department again notified her that no action would be taken by them. Despite the Labor Department's seasonable notice of the claimant's desire that suit be instituted, thus triggering conciliation procedures, the court in *Powell* affirmed a lower court order dismissing the claimant's suit for lack of jurisdiction, stating: "Notice of a desire that an agency of the federal government commence litigation on one's behalf simply does not equate with notice of such an individual's personal intent to commence a private lawsuit." 499 F.2d at 489.

Because of the finality of a fatal jurisdictional defect, it would seem the court could have been more charitable in its evaluation of the facts.

The subject of conciliation evokes the unfortunate case of *Brennan v. Ace Hardware Corporation*, 495 F.2d 368 (8th Cir. 1974). The Act contains the following instruction to the Secretary of Labor: "Before instituting any action under this section, the Secretary shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion." 29 U.S.C. § 626(b).

In *Ace Hardware*, a compliance officer of the Department of Labor, upon receiving a complaint, engaged in two face-to-face meetings (the first of which lasted six hours) and subsequently engaged the employer in a telephone conversation. The employer denied having practiced age discrimination, despite convincing written evidence to the contrary, and four months after the last communication the Secretary brought suit. The court found that the defendant did indeed violate the Act but dismissed the suit, denying the plaintiff, and the workers in whose behalf he brought suit, all relief because of an inadequate attempt by the Secretary to achieve voluntary compliance through conciliation, conference, and persuasion. *Brennan v. Ace Hardware Corp.*, 362 F. Supp. 1156 (D. Neb. 1973).⁵ The Circuit Court of Appeals affirmed, but at least dispelled the impression left by the lower court that the Labor Department's field operations handbook, prepared for the guidance of compliance officers, was the administrative equivalent of the Ten Commandments, a departure from which would damn the case. *Brennan v. Ace Hardware Corporation*, *supra*, 495 F.2d at 375, 376. The appellate court did, however, reach a rather mystifying conclusion of its own; the Secretary argued that the lower court should have stayed the action pending the rigorous conciliation efforts deemed required but the circuit court held that the refusal to grant

⁴ The *Burgett* case also illustrates the class action feature of the Act which distinguishes it from title VII of the Civil Rights Act. The Age Discrimination in Employment Act is enforced by the Dept. of Labor in accordance with the procedures of the Fair Labor Standards Act, which supersedes the class action procedures of Rule 23 of the Federal Rules of Civil Procedure. *Hull v. Continental Oil Company*, 58 F.R.D. 636 (S.D. Tex. 1973). Under the Fair Labor Standards Act, before a person becomes a member of a class in a class action he must give his written consent and file it with the court. 29 U.S.C. § 216(b). *Burgett* held that, as long as the necessary written consents are filed, a representative plaintiff may, on behalf of the members of the entire class, comply with the jurisdictional prerequisite of 60 days notice within 180 days following the alleged discriminatory practice.

⁵ In fairness, it should be pointed out that, under the facts of the case, the victims of the age discrimination suffered little pecuniary loss due to alternative employment opportunities and other circumstances. *Brennan v. Ace Hardware Corporation*, 495 F.2d 368 at 371 n. 3 (8th Cir. 1974).

a stay was consistent with the lower court's authority "to grant such legal or equitable relief as may be appropriate." 29 U.S.C. § 626(b).

As mentioned earlier, federal/state harmony was accommodated by a provision that the Act shall not "affect the jurisdiction of any agency of any state performing like functions with regard to discriminatory employment practices on account of age. . . ." 29 U.S.C. § 633(a). Several courts have construed the state remedy provisions in a manner inconsistent with the face of the Act and inconsistent with the Secretary's interpretation. The Act incorporates by reference provisions of the Fair Labor Standards Act relating to investigations and inspections (29 U.S.C. § 211(b)), suits by private individuals and the Secretary of Labor to recover unpaid wages (29 U.S.C. § 216), and suits by the Secretary of Labor to obtain injunctive relief (29 U.S.C. § 217). 29 U.S.C. § 626(b). Nothing in those procedural enforcement statutes requires exhaustion of any state remedies as a jurisdictional prerequisite and, indeed, 29 U.S.C. § 211(b), provides that "with the consent . . . of state agencies . . . the Secretary of Labor may . . ." utilize state agencies in the investigation of industry-wide or individual employment practices to detect illegality.

The Act also provides that, in the event the state has a law prohibiting employment age discrimination and authorizing state-enforced relief, "no suit may be brought under . . . this Title before the expiration of 60 days after proceedings have commenced under the state law. . . ." 29 U.S.C. § 633(b). By its terms, this provision would not seem to require that state remedies be first exhausted but, rather, that if state enforcement procedures have entered the picture, they will be given a reasonable opportunity to accomplish their purpose. Construed as a whole, the Act reinforces that conclusion; the provisions of the Fair Labor Standards Act which, through incorporation by reference, specify the procedural enforcement authority of the Department of Labor say nothing about resort to state remedies as a precondition to litigation and are couched in optional terms with respect to the use of state agencies for investigations and inspections. Nevertheless, three courts have held that if a state remedy is available, subject matter jurisdiction⁸ over a suit under the Act does not exist that remedy has been pursued. *Goger v. H. K. Porter Company, Inc.*, supra, 492 F.2d 13 (3rd Cir. 1974); *McGarvey v. Merck & Co., Inc.*, supra, 359 F. Supp. 525 (D. N.J. 1973), vacated 493 F.2d 1401 (3rd Cir. 1974);⁹ *Vaughn v. Chrysler Corporation*, 382 F. Supp. 143 (E.D. Mich. 1974).

⁸ It would seem that the failure of the Department of Labor to try hard enough to conciliate, confer, and persuade should not prejudice an individual who commenced a private civil action under 29 U.S.C. § 626(c) (provided, of course, that the civil action is preceded by appropriate notice and time requirements). The statute relied upon by the court in *Acc Hardware* provides: "Before instituting any action . . . the Secretary shall . . . engage in conciliation efforts. Thus the language evoking the court's judicially imposed condition precedent applies only to litigation instituted by the Secretary. Cf. *Goger v. H. K. Porter Co.*, 492 F.2d 13 (3rd Cir. 1974), where the court relieved a private litigant from the prejudicial consequences of bad advice from the Department of Labor.

⁹ The statute provides that the 60-day period begins to run when a written and signed statement of the facts is sent by registered mail to the appropriate state authority. 29 U.S.C. § 633(b).

¹⁰ Seemingly, *Goger v. H. K. Porter Company, Inc.*, 492 F.2d 13 (3rd Cir. 1974) has plowed new jurisdictional ground. While the court does not use the exact term "subject matter jurisdiction," that apparently was the import of its holding:

"We therefore conclude that section 633(b) required appellant to seek relief from the appropriate New Jersey agency prior to instituting her suit in the federal district court." 492 F.2d at 16; see *McGarvey v. Merck & Company, Inc.*, 359 F. Supp. 525 (D. N.J. 1973) where the term "jurisdiction over the subject matter" was used.

In *Goger*, the plaintiff had relied upon the advice of the Department of Labor that she was free to institute her federal action, which advice did not mention any state remedy. Under those circumstances, the court deemed "equitable relief to be appropriate" despite the absence of subject matter jurisdiction and remanded the case to the district court for a hearing on the merits. 492 F.2d at 16, 17. Such a disposition is difficult to reconcile with the idea that:

"The jurisdiction of the federal courts is carefully guarded against expansion by judicial interpretation or by prior action or consent of the parties. To permit a federal trial court to enter a judgment in a case [lacking subject matter jurisdiction] would by the act of the parties work a wrongful extension of federal jurisdiction and give district courts power the Congress has denied them." *American Fire and Casualty Company v. Finn*, 341 U.S. 6 at 17, 18 (1951).

¹¹ *McGarvey*, decided by a district within the Third Circuit, came before *Goger* and, while the Third Circuit on appeal in the former case did not articulate its reasons for vacating it, presumably it was to enable the lower court to reevaluate the case in light of the "equitable relief" jurisdictional principle enunciated in *Goger*.

In the above cases the courts were struck with the similarity in language between the state remedy provisions of Title VII of the Civil Rights Act of 1964 and its counterpart in the Age Discrimination in Employment Act of 1967. The Civil Rights Act has been construed to require resort to state remedies as a jurisdictional predicate, *see, e.g., Crosslin v. Mountain States Tel. & Tel. Co.*, 422 F.2d 1028 (99th Cir. 1970), and such a construction is certainly consistent with the language of the Act. Title VII outlines in some detail the procedural steps necessary to enforce its substantive protections and the first step required is the filing of a charge with the Equal Employment Opportunity Commission; in its ensuing investigation, according to the statute, "The Commission shall accord substantial weight to final findings and orders made by state or local authorities." 42 U.S.C. § 2000e-5(b). Within the framework of that procedure, the statute states: "No charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of 60 days after proceedings have been commenced under the state or local law." 42 U.S.C. § 2000e-5(c). Moreover, in the case of a charge filed by a member of the EEOC, the Commission is required to notify the appropriate state officials and, upon request, give them at least 60 days to remedy the alleged practice, 42 U.S.C. § 2000e-5(d). Since the filing of a charge initiates the administrative procedure which must be utilized before litigation, the conclusion seems inescapable that state enforcement mechanisms must be called into play as a jurisdictional prerequisite; and the legislative history supports that conclusion. *Crosslin v. Mountain State Tel. & Tel. Co.*, *supra*, 422 F.2d at 1030, 1031.

The Age Discrimination in Employment Act, however, sets forth a substantially different procedure. There is no requirement that an aggrieved individual do anything before commencing litigation other than giving the Secretary a 60-day notice of intent. 29 U.S.C. § 626(d), § 216(b). With respect to enforcement actions by the Department of Labor, while the law requires, as a precondition to litigation, that conciliation, conference, and persuasion be attempted, there is no mention of any notice to state authorities. It is also significant that the Act is very specific in its requirement that an aggrieved person notify the Secretary before suit and that the Secretary undertake conciliation before suit while saying nothing about an affirmative duty to notify state authorities before litigation by either the Secretary or an aggrieved person. Given the neutral legislative history on the question, *see Goger v. H.K. Porter Company, Inc.*, *supra*, 492 F.2d at 16, the conclusion that both the Secretary of Labor and an aggrieved person must first give notice by registered mail to state authorities and wait 60 days before instituting litigation seems dubious at best.¹⁰ The Secretary so argued unsuccessfully as *amicus curiae* in *Goger v. H. K. Porter Company, Inc.* *See* concurring opinion of Garth, J., 492 F.2d at 16.

While the decisions criticized above will not necessarily be followed in other circuits, both the Secretary of Labor and an aggrieved individual proceeding in his own behalf would obviously be well advised to scrupulously adhere to the Act's procedural requirements as judicially construed. As mentioned above, the Act's reference to state enforcement proceedings applies to the Secretary of Labor as well as to an aggrieved individual; therefore, in all cases, the logical first step is a written and signed statement of the facts to the appropriate state agency within the time limitation prescribed by the state statute.¹¹ In this connection, it is noteworthy that the effect of *Goger v. H. K. Porter Co.*, *supra*, *McGarvey v. Merck & Co., Inc.*, *supra*, and *Vaughn v. Chrysler Corporation*, *supra*, is to impose upon suits by the Secretary of Labor an unwritten statute of limitations (in addition to the two and three year statute, 29 U.S.C. § 255). If the time within which, according to state law, state proceedings should have been commenced has elapsed when the Secretary discovers, or has reported to him, a vio-

¹⁰ The three cases under discussion all dealt with suits by aggrieved individuals. Nevertheless, the reasoning is equally applicable to suits instituted by the Secretary of Labor because the language relating to state remedies ("no suit may be brought under Section 626 . . . before the expiration of 60 days after proceedings have been commenced under state law") applies to the full spectrum of enforcement alternatives, including those incorporated by reference from the Fair Labor Standards Act, 29 U.S.C. § 626.

¹¹ At the beginning of 1974 all but 15 states had age discrimination laws. In the language of the Secretary of Labor's Annual Report to Congress "State laws vary considerably from jurisdiction to jurisdiction with regard to age limits, coverage, discriminatory practices prohibited, and the penalties imposed." U.S. Department of Labor, Employment Standards Administration, report covering activities under the act during 1973.

lation of the Act it is too late; the jurisdictional predicate to suit would then be irretrievably lost.

An aggrieved individual can proceed first by complaining to the Wage/Hour Division of the Department of Labor, setting in motion the proceedings aimed at conciliation, conference and persuasion. However, since the Secretary is required by statute to undertake such activities upon receiving notice of intent to sue, it would seem advisable and prudent to couch the first communication to the Secretary in such terms. Since the notice of intent to sue is a jurisdictional absolute, and since it must come within six months after the discriminatory practice (10 months if there is a state remedy available), it would seem inadvisable to wait and court the disaster of inadvertence. The court in *Vaughn v. Chrysler Corporation*, *supra*, 382 F. Supp. 143 at 145, opined in dicta that notice of intent to sue cannot be given to the Secretary of Labor until 60 days after state proceedings have been in progress. The Act is devoid of any support for that proposition and it is believed that an aggrieved individual can, and should, begin by making one trip to the post office and sending two written and signed statements by registered mail, one to the state authorities and one to the Wage/Hour Division; the latter including, of course, a clear notice of intent to sue. Provided the notices are sent within the prescribed time, jurisdiction over a suit should exist 60 days thereafter.

Returning to the substantive provisions of the Act, both aggrieved individuals and the Secretary have fared little better at the hands of the courts. Decisions have been rendered regarding burden of proof and quantum of proof, regarding exceptions to the requirements of the Act, and regarding the coverage of the Act. In addition, recent legislation has substantially expanded its coverage and has created at least one interesting question of interpretation.

Following the lead of courts adjudicating cases under Title VII of the Civil Rights Act, courts have held that a prima facie case of employment discrimination based on age can be made by demonstrating a pattern from which discrimination can be inferred, casting upon the defendant the burden of justification. For example, in *Hodgson v. First Federal Savings and Loan*, 445 F.2d 818 (5th Cir. 1972), the Secretary prevailed on behalf of a 47-year-old claimant upon showing that during the year in which she was refused employment 35 persons were hired for the job, none over 40 and all but three in their teens or twenties. The court found the defendants' attempts at justification (the applicant was too heavy and therefore would have difficulty standing for extended periods of time) insufficient to overcome the prima facie case established. Similarly, in *Schultz v. Hickok Manufacturing Co., Inc.*, 358 F. Supp. 1208 (N.D. Ga. 1973), a discharged 56-year-old district sales manager proved that during an 18 month period, within which he had been discharged and following a management change, the average age of seven district sales managers declined from 53 to 40 and that all of the former seven had been either discharged, retired or promoted. The court found that the defendant failed to overcome the prima facie case thus established by proof that the company was attempting to revitalize its management and that the plaintiff was an average producer.

Where the plaintiff does not have the benefit of a demonstrable employment pattern favoring younger workers or applicants his lot becomes more difficult. In *Surrisi v. Conuced Corporation*, 510 F. 2d 1088 (8th Cir. 1975), an employee of nineteen years who advanced to national sales manager was discharged because he was unable to improve sales in accordance with the expectations of a recently reorganized top management. Although the plaintiff "was an honest, hardworking individual who did the best that he could," and although there was testimony indicating his discharge was motivated by a desire to replace him with a younger man, the circuit court affirmed the finding of the lower court that the plaintiff failed to sustain his burden of proof.¹² *Surrisi* was an appeal from a judgment on the merits and while the point was thus not raised, it is probable that the plaintiff's proof was sufficient to cast upon the defendant employer the burden of justification. In *Wilson v. Seal Test Foods Division of Kraftco Corp.*, 501 F.2d 84 (5th Cir. 1974), which was an appeal from an order granting the

¹² Of course, there is a distinction between the ultimate burden of proof and the burden of going forward, which is passed to a defendant upon a prima facie showing of age discrimination. The ultimate burden of proof remains with the plaintiff. *Bittar v. Air Canada*, 512 F.2d 583 (5th Cir. 1975).

employer's motion for a directed verdict following the plaintiff's case, the court, in reversing, stated:

"We simply state that in the particular procedural framework within which the case is presented, a showing that the appellant was within a protected class, was asked to take early retirement against his will, was doing apparently satisfactory work, and was replaced by a younger person, will not permit dismissal at such an early stage of the trial proceeding." 501 F.2d at 86.

Concerning the ultimate burden of proof, an important case is *Laugesen v. Anacanda Company*, 510 F.2d 307 (6th Cir. 1975). The plaintiff, 56 years of age, had been an employee of the defendant for 13 years prior to his discharge pursuant to a company-wide retrenchment. The general reduction in force was preceded by a system of individual evaluations and the plaintiff's evaluation was ambiguous in terms of age as a factor. On appeal from a jury verdict in favor of the defendant, the court reversed on an instructional error using the following language:

"... [W]e believe it was essential for the jury to understand from the instructions that there could be more than one factor in the decision to discharge and that he was nevertheless entitled to recover if one such factor was his age and if in fact it made a difference in determining whether he was to be retained or discharged. This is so even though the need to reduce the employee force generally was also a strong, and perhaps even more compelling reason. . . ." 510 F.2d at 317. Thus, age must be a truly neutral factor.

An important exception to the above statement is when "age is a bona fide occupational qualification for the normal operation of the particular business." 29 U.S.C. § 623(f)(1). The Secretary of Labor has offered the following interpretation of that exception:

"It is anticipated that this concept of a bona fide occupational qualification will have limited scope and application. Further, as this is an exception it must be construed narrowly, and the burden of proof in establishing that it applies is the responsibility of the employer, employment agency or labor organization which relies upon it." 29 C.F.R. § 860.102(b).

His interpretation did not withstand judicial scrutiny. In *Hodgson v. Greyhound Lines, Inc.*, 354 F. Supp. 230 (N.D. Ill. 1973), the Secretary challenged Greyhound's policy of hiring only persons under 35 years of age as inter-city bus drivers; the defendant's justification was based essentially upon "good basic common sense" and the medical generalization that degenerative changes accompany advancing age. Finding the absence of any scientific or empirical factual basis for the employment policy, the lower court held for the plaintiff. An appellate court, in reversing the decision, appeared to beg the question at issue. *Hodgson v. Greyhound Lines, Inc.*, 499 F.2d 859 (7th Cir. 1974). The crux of its holding was that:

"Greyhound need only demonstrate however a minimal increase in risk of harm for it is enough to show that elimination of the hiring policy might jeopardize the life of one more person than might otherwise occur under the present hiring practice. 490 F.2d at 863.¹³

In the lower court the defendant had presented some medical and statistical evidence but by any fair standard all of such proof cut both ways, e.g., to the extent physical examinations were not conclusive predictors of physical and mental driving ability the lack of reliability applied to drivers of all ages, both young, middle aged and old. The message of *Greyhound* thus appears to be that the evidence will be viewed in the light most favorable to the employer if the job involves dangers even though the evidence is predicated upon conjecture rather than fact. Since that analysis involves the initial assumption that ability does, indeed, diminish with age, it seems inconsistent with the express congressional intent underlying the Act "to promote employment of older persons based on their ability rather than age." 29 U.S.C. § 621(b).

A widely misunderstood exception to the Act was provided for by Congress in the following words: "It shall not be unlawful for an employer . . . [to] observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to

¹³ The court relied heavily upon *Spurlock v. United Airlines, Inc.*, 475 F.2d 216 (10th Cir. 1972), a Title VII case, which held, and quite properly so, that an airline need not lower its preemployment standards for pilots, where the standards are demonstrably job-regulated, because of the magnitude of the risk if pilots are unqualified. In the *Greyhound* case no preemployment standard, save age, was challenged.

evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; . . ." 29 U.S.C. § 623(f) (2).

The interpretive regulation states, in part: ". . . [T]he Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of Section 4(f) (2)."

That interpretation comports with neither the language of the statutory exception nor its intent, as revealed by pertinent legislative history. The proviso "except that no such employee benefit plan shall excuse the failure to hire any individual" should dispel the notion that any pension or similar plan could be utilized to involuntarily retire an employee before the age of 65 (the cutoff age for the Act's protections). A person retired under such circumstances could immediately ask for his job back and be surrounded by the protections of the Act.¹⁴

It is clear the purpose of the employee benefit plan exception was to permit employers to discriminate against older employees by not enrolling them in pension or retirement plans, or by providing reduced benefits due to fewer years of employment. Otherwise, the costs of such plans would discourage employers from adopting or retaining them. In the language of the court in *Hodgson v. American Hardware Mutual Insurance Co.*, *supra*, 329 F. Supp. 225 (D. Minn. 1971):

" . . . A requirement that newly hired older workers be entitled to the same retirement benefit provisions as younger ones would make the cost of funding such retirement plans prohibitive and discourage employers from adopting them . . ." 329 F. Supp. at 229.

The legislative history could not be more specific: ". . . This exception serves to emphasize the primary purpose of the bill—hiring of older workers by permitting employment without necessarily including such workers in employee benefit plans." HOUSE REPORT NO. 805, 2 U.S. CODE CONG. & ADMIN. NEWS, 90th Cong., 1st Sess. 2224 (1967).

The above suggested dual application of the "plain meaning" and "legislative intent" approaches to statutory construction led to the opposite result in *Brennan v. Taft Broadcasting Company*, *supra*, 500 F.2d 212 (5th Cir. 1974). In that case the Secretary brought suit in behalf of a 60-year old employee involuntarily separated by an employer which had a profit sharing plan providing for normal retirement at age 60, although the plan did not specifically state that retirement would be mandatory rather than optional.

The plaintiff argued that the plan was not "bona fide" because the mandatory retirement feature was not clearly made known to the employee and, that the employer was under a statutory obligation to consider the employee's application for reemployment. The court acknowledged the existence of legislative history revealing a congressional purpose to protect "plans which in the absence of the (f) (2) exception would be too costly for the employer to maintain," 500 F.2d at 216, but did not feel it was germane:

"It is hardly reasonable to require persons affected by legislation to delve into voluminous and conflicting collections of speeches to determine whether what a statute plainly says is what it really means." 500 F.2d at 217.

To the Secretary's argument that the employee should be reconsidered for employment under the provision "no such employee benefit plan shall excuse the failure to hire any individual" the court responded:

"If retired employees must be rehired immediately, the right to insist on compliance with a plan is an illusion. Congress could not have possibly intended, or directed, such a contradictory, irreconcilable result." 500 F.2d at 218.

Thus, the term "any individual" does not mean what it says. The court could easily have given effect to the literal language of the statute and harmonized it with expressed legislative intent rather than twisting the former and ignoring

¹⁴ So argued the Secretary of Labor, unsuccessfully, in *Brennan v. Taft Broadcasting Company*, 500 F.2d 212 (1974). The inconsistency between the Secretary's position in *Brennan* and his own interpretive regulation is obvious. *cf. Hodgson v. American Hardware Mutual Insurance Co.*, 329 F. Supp. 225 (D. Minn. 1971), where a benefit plan mandated retirement at 62 and the court held it did not justify retiring everyone at that age whether enrolled in the plan or not.

the latter.¹⁵ See also *Steiner v. National League*, 377 F. Supp. 945 (C.D. Cal. 1974); *DeLorraine v. MEBA Pension Trust*, #74-096 (2d Cir. June 14, 1974) n. 7.

Another decision which seems to do violence to the terms of the Act is *Brennan v. Paragon Employment Agency, Inc.* 356 F. Supp. 286 (S.D.N.Y. 1973), *aff'd w/o op.* 489 F.2d 752 (2d Cir. 1974). The Act provides, unambiguously:

"It shall be unlawful for an employer . . . to print or publish . . . any notice or advertisement relating to employment by such employer . . . indicating any preference, limitation, specification, or discrimination based on age." 29 U.S.C. § 623(e).

The interpretive regulation logically states: "When help wanted notices or advertisements contain terms and phrases such as 'age 25 to 35', 'young', 'boy', 'girl', 'college student', 'recent college graduate', or others of a similar nature, such a term or phrase discriminates against the employment of older persons and will be considered in violation of the Act." 29 C.F.R. § 860.92(b).

Brennan v. Paragon Employment Agency, Inc., *supra*, was a suit against an employer based upon a help wanted advertisement seeking "college students," "girls," "boys," and "June graduates." The court declined to follow the Secretary's interpretation of the Act, did not consider how, under the language of the Act, a different interpretation would be possible, and granted the defendant's motion to dismiss:

"The purpose of the Act was to prevent persons aged 40 to 65 from having their careers cut off by unreasonable prejudice. It was not intended to prevent their children and grand-children from ever getting started. There is nothing in the Act that authorizes the Secretary of Labor to prohibit employers from encouraging young persons—whether or not in college—to turn from idleness to useful endeavors. . . ." 356 F. Supp. 288, 289.

The decision seems to veer 180° away from the statute, which says it "shall be unlawful" to indicate in an employment advertisement "any preference, limitation, [or] specification . . . based on age."

This article has made frequent reference to the interpretive regulations issued by the Department of Labor. In the short history of the Act, as shown above, the Secretary's interpretations have met with both judicial approval and disapproval; and, in the author's opinion, judicial approval in one instance was misplaced. At least one other interpretation by the Secretary can, it is believed, be seriously questioned. Concerning apprenticeship programs, the regulations provide pertinently:

"Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs. . . ." 29 C.F.R. § 860.106.

There is nothing in the language of the Act which justifies that interpretation and, indeed, the prohibitions of the Act would seem to squarely cover apprenticeship programs. At least some legislative history appears to believe the Secretary's interpretation:

"The Committee declined to incorporate a specific exception for management training programs since it was believed so broad an exemption in the law might open a very wide door of possible abuse. Almost any training, or opportunity for acquiring experience on a job, might be construed as leading to future advance-

¹⁵ Effective May 1, 1974, the Act was amended to include within the definition of "employer" a state or political subdivision of a state and any agency or instrumentality of a state; and to embrace employees of the United States within its protections. Section 28, P.L. 93-259, 88 Stat. 53, U.S. Code Cong. & Admin. News, 93rd Cong., 2d Sess., 638-640, 29 U.S.C. §§ 630(b), 633a. (With respect to federal government employees, enforcement is delegated to the Civil Service Commission rather than the Department of Labor but most of the protections of the Act are the same; however, state courts, which have concurrent jurisdiction over other suits under the Act, do not with respect to suits by federal employees. Compare 29 U.S.C. § 633a (c) with § 626(c); *Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962).) The various exceptions to the Act contained in 29 U.S.C. § 623(f) are applicable to "an employer, employment agency, or labor organization." The amendment defines the term "employer" to expressly exclude "the United States." Therefore, taken literally, the employee benefit plan exception would not be available to the United States and, even if the exception did permit involuntary retirement before age 65, the federal government, or an agency, such as a non-appropriated fund activity, would nevertheless be prohibited from involuntarily retiring an employee before the age 65 pursuant to a benefit plan.

ment to management positions. . . ." House Report No. 805, 2 U.S. Code Cong. & Admin. News, 90th Cong., 1st Sess., 2217 (1967).¹⁶

The comprehensive definition of prohibited practices on the part of employers and labor organizations seems to clearly encompass apprenticeship programs. 29 U.S.C. § 623(a), (c). Given the incidence of middle aged women compelled or desiring to enter the work force because of divorce, widowhood, or the termination of parental obligations, as well as workers displaced by technology and plant closings, it would seem that acquiescence by an affected person in the Secretary's interpretation would be unwarranted.

In conclusion, the purpose of this article has been to summarize the most recent judicial developments under the Federal Age Discrimination in Employment Act of 1967. Where appropriate, interpretive regulations issued by the Secretary of Labor have been considered. To the extent the article has been critical, it has been for the purpose of emphasizing congressional policy underlying the Act and suggesting that future cases involving the issues discussed might better reflect that policy. With the exception of the upper age limit applicable to the protected category of workers, and the amount of money authorized to be appropriated, the substantive provisions of the Act as written seem reasonably calculated to accomplish its objective.¹⁷ With respect to the procedural requirements of the Act, it is suggested that Congress could make it clear that, while states have concurrent jurisdiction under state age discrimination laws, resort to the state remedy is not a jurisdictional prerequisite to judicial relief under the Act.

NEWSLETTER ARTICLES FOR PUBLICATION IN NSCLC NEWSLETTER

Anyone wishing to share items of interest with the readership of the *NSCLC Newsletter* is invited to submit such items to NSCLC at its Los Angeles Office, attention Marie Baker.

SSI DEVELOPMENTS

Reform Package Introduced

On April 24, 1975, Senator Robert Taft, Jr. (R, Ohio), introduced an SSI reform measure entitled "The Supplemental Security Income Amendments of 1975," and numbered S. 1514. Though the bill has its flaws (most noticeably it does not raise the basic grant levels, never adequate, and now eroded by a year and a half's inflation and contains nothing to require or encourage SSA to replace missing checks more quickly or efficiently), it does speak to many of the structural and administrative difficulties our clients have encountered since the program's inception. Among the changes the bill would make are the following:

(1) It would abolish the six month rule which treats a separated eligible couple as though its members were together for the first six months after they have separated.

(2) It would permit only half the value of support received by institutionalized recipients from non-charitable sources to be counted as income.

(3) It would require the Secretary of H.E.W. to establish criteria for the determination of presumptive disability designed to assure that "individuals who are reasonably established to be suffering from conditions which would normally constitute disability" will qualify for presumptive disability benefits.

(4) It would permit a recipient to receive more than one \$100 emergency advance payment.

(5) It would permit presumptive disability benefits to continue beyond the three months for which they are presently authorized until such time as an applicant received an Initial Determination of eligibility.

(6) It would institutionalize the SSI Alert.

(7) It would cause SSI recipients to be eligible for food stamps on the same basis as are other food stamp applicants, but would grandfather the eligibility of all SSI recipients presently receiving food stamps.

(8) It would require applications for benefits to be "acted upon" within 30 days after they are filed in the case of aged and blind applicants, and within

¹⁶ The report does, however, recognize the right of the Secretary to permit some age classification for some positions leading to "future advancement to executive, administrative or professional positions," p. 2217.

¹⁷ A possible exception to that statement would be legislation clarifying the fact that an employee benefit plan may not be used to justify the involuntary discharge of an employee under the age of 65.

60 days of filing in the case of disabled applicants. It would in addition require decisions on presumptive disability to be reached within 20 days of application.

(9) Effective 1977, it would require immediate payment of benefits to any claimant basing his claim on disability who had properly requested a hearing before an administrative law judge, but who had received no determination on the basis of such hearing within 120 days of the date the claimant requests such a hearing.

(10) It would permit federal courts to review findings of fact made in the course of the SSI appeals process on the same basis that they presently do in adjudicating Social Security appeals.

(11) It would permit some recipients who are alcoholics or drug addicts to receive their checks directly, rather than through a representative payee, if waiver of the payee requirement were found to be of significant therapeutic value.

The bill's first important hurdle will be the Senate Finance Committee which will most likely take it up this fall. Members of the Finance Committee are: Lloyd Bentsen (D., Tex.); Bill Brock (R., Tenn.); Harry F. Byrd (Ind., Va.); Carl T. Curtis (R., Neb.); Robert Dole (R., Kan.); Paul J. Fannin (R., Ariz.); Mike Gravel (D., Alas.); Clifford P. Hansen (R., Wyo.); Vance Hartke (D., Ind.); Floyd K. Haskell (D., Colo.); William Hathaway (D., Me.); Russell B. Long (D., La.); Walter F. Mondale (D., Minn.); Gaylord Nelson (D., Wis.); Bob Packwood (R., Ore.); Abraham Ribicoff (D., Conn.); William V. Roth, Jr. (R., Del.); and Herman E. Talmadge (D., Ga.).

House Ways and Means Committee Hearings

The Subcommittee on Public Assistance of the House Ways and Means Committee held hearings early in June on SSI, evidently in preparation for an attempt to put together a Committee bill. Witnesses ran the gamut from the official (the Commissioner of the Social Security Administration) to legal services attorneys, including members of the House of Representatives, state and county representatives, and spokesmen from numerous private membership and professional organizations.

Commissioner Cardwell's testimony was disappointing in that it did not contain any recommendations regarding possible legislative changes. The administrative problems in the program, e.g., delays in the application and appeals process, and inadequacy of the emergency assistance provisions, were addressed not only by legal services attorneys but also by representatives of states and counties, who with respect to these problems would seem to be natural allies for legal services attorneys. Food stamp eligibility and pass-through of federal cost-of-living increases were two other topics of concern in many quarters.

One of the Congressional members who testified, Elizabeth Holtzman, spoke in support of a bill which she had previously introduced, H.R. 4308. Unlike the Taft bill, this bill does attempt to deal with the inadequacy of the grant levels, albeit not by proposing to directly raise them. To begin with, it purports to require the states to pass through the federal cost-of-living increase, a requirement somewhat inconsistent with the notion of optional supplementation. More controversial provisions are the supplementary housing allowance, which would provide an extra amount up to \$50.00 per month to recipients whose housing expenses (rent or mortgage payments, taxes, and hearing cost) exceed one-third of their gross income, and provisions for emergency assistance to replace furniture or clothing, to aid in the "establishment of a household," to prevent threatened eviction, and to pay outside housing expenses for recipients who are temporarily institutionalized. (The bill also contains other, less controversial, provisions.)

No information is yet available on what will be in the Committee bill, even as to what kinds of problems it will address or how broad it will be.

Three Cases Challenge Constitutionality of Six Month Rule

Cases have been filed in the District of Columbia, the Northern District of Georgia and the Western District of Washington challenging the constitutionality of the "six month rule." The rule which, for purposes of grant level and income sharing, treats members of an eligible couple who have separated as though they were living together for the first six months of their separation is attacked in all three cases as a denial of due process of law and equal protection of the laws. The cases are: *Mansfield v. Weinberger*, No. 75-0365 TDC, brought by attorneys from the Boston Legal Assistance Project, Florida Rural Legal Services and the Sacramento, California Law Center for the Elderly, with backup assistance from the Western Center on Law and Poverty and our program;

Ellison v. Weinberger, No. C-75-497A, brought by attorneys for the Georgia Legal Services Program; and *Anderson v. Weinberger*, No. C-75-365S, brought by attorneys for the Seattle Legal Services Center. Both *Mansfield* and *Ellison* have been argued and are awaiting decisions by three-judge panels. A three-judge court has not yet been convened for the *Anderson* case apparently because the district judge to whom the case was assigned is awaiting the outcome of *Mansfield* which seeks relief on behalf of a nationwide class. Both *Ellison* and *Anderson* are statewide class suits. We have pleadings from both *Mansfield* and *Ellison*.

Other developments

Friends in the Social Security Administration have advised us of the following three developments in the SSI program. Since all three developments can be expected to help our clients, we can probably anticipate that they will not be reflected in an official source of law, such as the Claims Manual or regulations, very quickly. We can hope, though, that they will begin to have some effect on claims before we see them spelled out on paper. The changes are:

(1) After a claimant receives a favorable decision from a claims examiner at the hearing stage of the appeals process, SSA will take steps to pay that claimant benefits found due him or her while the Appeals Council determines whether to review the hearing decision on its own motion. Heretofore, no steps have been taken to generate a check for either retroactive or current benefits until after the 30 day period for Appeals Council review had expired. The change should mean that applicants who win their claims at the hearing level should receive their first checks about 30 days earlier than they have to date.

(2) Independent verification of home value will no longer be required for applicants who orally attest that they own their own home and that it is worth less than \$20,000. Proof of assessed value will now be required only when a claimant tells SSA that his or her home is worth more than \$20,000 but less than \$25,000. Similar changes may soon be adopted for determining the value of other resources such as automobiles.

(3) SSA has finally decided to phase out the SSI Handbook and to communicate all policy matters to the district officers by way of the Claims Manual. Since we have the Claims Manual and do not have the Handbook this will be a most welcome change. A task force has been appointed within SSA to determine what, if any, Handbook materials should be retained and reissued as Claims Manual transmittals. The task force's work is expected to be completed within two months. We can only guess though how closely the task force will follow this time table.

We hope you will keep us posted as to how long it takes these changes, assuming they are carried through, to filter down to the district office level. We will of course do what we can to keep track of them from here.

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NSCLC ATTORNEY SPECIALTIES

- Age discrimination—Robert Gillan and James Lanigan.¹
- Consumer problems—Robert Gillan and Arlene Shadoan.¹
- Federal Government pensions—James Lanigan.¹
- Funding for legal services programs for seniors—Peter Horstman, Paul Nathanson, and James Lanigan.¹
- Guardianship and involuntary commitment—Peter Horstman, Sally Hart-Wilson, and Arlene Shadoan.¹
- Health and nutrition—Sally Hart-Wilson and Arlene Shadoan.¹
- Housing—Robert Gillan and James Lanigan.¹
- Nursing homes—Sally Hart-Wilson and James Lanigan.¹
- Older women—Sally Hart-Wilson, Anne Silverstein, and Paul Nathanson.
- Private pensions—Bruce Miller, Paul Nathanson, and James Lanigan.¹
- Probate—Peter Horstman.
- Social Security—Bruce Miller, Anne Silverstein, and James Lanigan.¹
- SSI—Bruce Miller, Anne Silverstein, and James Lanigan.¹
- Transportation—Arlene Shadoan.¹
- Veteran's matters—Anne Silverstein and Peter Horstman.

¹ Washington Office Staff.

Mr. KASTENMEIER. Thank you, Mr. Lanigan.

You say that the Legal Services Corporation Act prohibits the Corporation from participating in litigation. Do backup centers participate in litigation?

Mr. LANIGAN. Yes. As I indicated, we in our main office at the present time are acting as cocounsel in 17 cases and in the past year in the Washington office we have acted as cocounsel in five cases. So we do—and in this activities report that I asked to be put in the record, we describe exactly which type of action we took in each of the cases that I have mentioned.

In some cases we prepared pleadings. In some cases our members actually appeared in court.

Mr. KASTENMEIER. Mr. Freedman, where do the backup centers get their cases, by and large?

Mr. FREEDMAN. Well, as I indicated, the cases arise from our work with local programs. I could give you a few examples that might qualify that.

The lawyers in the North Mississippi rural legal Services program were representing disabled children whom Mississippi had cut off the medicaid rolls. This came about because the children were switched from the Aid to Dependent Children category to the new SSI program. The lawyers brought the case, but requested assistance, and we drafted the brief in the case for them, and therefore were cocounsel, and the case was successful and those children are now getting their medicaid benefits.

Another type of involvement came about when a lawyer in rural Texas took a case to a district court and lost. The case involved the right of a grandmother who was married, who was taking care of her grandchild, to receive AFDC benefits. For some reason, Texas had a regulation that married grandparents could not receive AFDC benefits, totally unjustified by Federal law. The attorney in a one-person office asked us if we could take the appeal to the fifth circuit. We did. We briefed the appeal, argued the appeal, and won.

So those are the kinds of ways in which we get involved in these cases.

Mr. KASTENMEIER. Now, a typical backup center, how would it be funded presently? Where would it get its resources, financial resources?

Mr. FREEDMAN. The funds have come from the National Office of the U.S. Office of Economic Opportunity which last year became the U.S. Community Services Administration, and this has provided the bulk of the funding for the backup centers until now.

Mr. KASTENMEIER. When you say the bulk, what do you mean?

Mr. FREEDMAN. Some centers have also been able to get funds from other sources, particularly other governmental agencies. The National Housing and Economic Development Center has obtained substantial funding for economic development work. The national employment law program has obtained funding from the Equal Opportunity Commission for title VII litigation. The migrant legal action program has funds from other agencies of the Federal Government concerned with the rights of migrants. Also funds have been obtained from private sources. The Indian Law Backup Center is a component

of the Native American Rights, which is a foundation-funded program to assure Indian rights.

One of the additional problems created by the Legal Services Corporation Act of 1974 is that the research, the various types of backup activities, is being taken over by the Legal Services Corporation. There probably will be little, if any, ability to attract the other funds to the benefit of legal services clients. It is theoretically possible, I imagine, that the Legal Services Corporation as a 501(c)(3) corporation could obtain funding, but I think it is very unlikely that people are going to be given funding through a government agency to do this type of work.

Mr. KASTENMEIER. In a nutshell, then, what would happen to the backup centers or to some of the backup centers if, after March 31, 1976, after that time, if this bill isn't passed? Do you have notion?

Mr. FREEDMAN. Well, this is a matter that is being discussed very much now within the Legal Services Corporation and the legal services community. The legislation itself is not a model of clarity and people have been trying to understand exactly what it would permit and not permit.

It seems to me, however, that there is a good possibility that the Corporation will conclude that the only functions of the backup centers that it can fund are the direct advocacy functions themselves and perhaps a few other activities in the training and technical assistance area that the legislative history seems to suggest may also be directly funded. The other activities, the manuals, the research, the inquiry answering type of function, could only be provided by the Corporation itself. This—what will happen then simply isn't clear. What is clear is that many, I would say most of the able attorneys now performing the multitude of functions, simply will not go to work in an agency where they cannot provide representation.

I can say from my own backup center that that is the position that everybody has taken. The Corporation, if it is going to provide that function itself, is going to have to go out in the market and hire people. I believe it will have great difficulty hiring people with the kind of experience that could provide litigation advice, representational advice effectively. Even if it does find such people, those people are going to get stale the longer they stay at the Corporation.

The result of that, as I see it, is a rapid winding down. I don't know how it would evolve, but a rapid winding down of the type of effective national work that we have seen and I believe that, of course, was the intention of the sponsors of the restriction in the bill.

Mr. KASTENMEIER. You don't feel you could get funding from, let us say, the great foundations, or any other source other than the Legal Services Corporation itself?

Mr. FREEDMAN. As I indicated, the budget for the backup centers at the moment is in the vicinity of \$5 million. I am not sure of the precise figure, but it is in that area. The foundations have been having financial troubles of their own, of course, and have also contributed rather substantially to the public interest law area for the last several years and have announced an intention to close down some of that funding. I can speak from some personal experience because our center has engaged very extensively in private fund-raising and at this point have been able to obtain commitments that would fund us at a level

of one-third of our current budget and that includes commitments from the largest and most interested of the foundations.

So, from there on out the going will be much, much tougher. Most backup centers, including those that have attempted to explore private funding markets are coming up dry. So I think the answer is clear that if this type of funding is not provided, most of the centers will not be able to develop alternate sources of funding.

Furthermore, even if they do, by and large that funding will not be to provide the types of activities to the local legal services programs that are now being provided. Most foundation officials I have talked to have said quite correctly, I think, that it is the Federal Government's job to provide training, technical assistance, research, cocounsel services, and so forth, to its legal services programs and that they are not going to pick up the Federal Government's burden just because the Federal Government decided it was not going to assume it itself. So, there is a lot of resistance to funding in this area.

Mr. KASTENMEIER. Is it your position that the entire range of legal services through backup centers is to support the poor in this country? Given access to the programs and the eligibility qualifications, what is the clientele of the Legal Services Corporation or, in fact, the backup centers, as you understand it?

Mr. FREEDMAN. Well, the qualification is one of indigency. The act requires that services only be provided to indigents and sets up various criteria that the Corporation is to use in setting an indigency standard. Of course, in the area of work in which I am involved, public assistance, the clientele by definition is indigent. The Corporation is only concerned with legal rights of indigent persons.

Mr. KASTENMEIER. Is that also true of other groups such as senior citizens, American Indians? Are they by definition poor?

Mr. FREEDMAN. No. Those groups are not by definition indigent and the services are provided to indigent members of those groups.

Mr. KASTENMEIER. Who are the opposing litigants when litigation is involved, if there is a class of person or entity? Who are on the other side in cases in which the backup centers or Legal Services Corporation would be funding legal activities?

Mr. FREEDMAN. I don't have a precise statistical answer. It would be my impression that most often it would be public agencies of some sort. In the area of welfare, in the area of public housing, in most health questions, in most juvenile law questions, the issue is between the individual and the Federal, State, and local government. In some areas, of course, individuals are on the other side, either as plaintiffs or defendants, depending upon how the case arises, might be landlords, might be stores, commercial enterprises. Those, I think, would be the major groups of litigants that we encounter.

Mr. KASTENMEIER. Do these entities have reason to oppose or complain about this endeavor in a sense because they are incurring stiff legal resistance in areas which would necessarily traditionally be true?

Mr. FREEDMAN. Well, in fact, I think that is, of course, why there has been so much controversy over the legal services program since it was founded. People are being challenged as to the legality of their actions who had never been challenged before. There may be a reason for their resistance, but I don't think it is a reason that the Congress should be concerned about.

The concern would be if there were improper or unprofessional behavior on the part of the legal services program, and I think the record on that score is excellent.

Mr. KASTENMEIER. Thank you, Mr. Freedman.

The gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Freedman, would you turn to page 15 of your statement, please. Could you advise us where the report is that you refer to that the Office of Economic Opportunity has prepared which they thought would be very supportive of their intentions, but apparently worked to the contrary? Where would we get that?

Mr. FREEDMAN. Well, this series of evaluations that was prepared for the Office of Economic Opportunity was made available by them from time to time to Congress. I don't know if this committee staff has yet obtained those documents, but I don't think there would be any problem in getting them so they would be available. If they will not be made available from those services, we would be happy to provide them to you.

Mr. RAILSBACK. But it is a series of reports or evaluations from that office that were automatically made available to us, is that right?

Mr. FREEDMAN. Well, it was a series of reports prepared by an independent contractor to OEO.

Mr. RAILSBACK. Who was that?

Mr. FREEDMAN. American Technical Assistance Corp.

Mr. RAILSBACK. I see.

Mr. FREEDMAN. And they had a contract to evaluate legal services programs in general. I think they were to evaluate a third to a half of the programs each year, something of that sort, and backup centers with the regular cycle of evaluations, which means they were not evaluated each year. At the time of this controversy, the evaluation schedule was interrupted, and the American Technical Assistance Corp. was asked to evaluate all of the backup centers that had not been evaluated in the previous 2 or 3 months, and they then dropped the evaluation of local programs and evaluated the national centers.

Mr. RAILSBACK. Of what help now is the corporation in providing research, either general or specific, to a litigator?

Mr. FREEDMAN. Well, of course, at this very moment, the corporation has just hired its chief executive officer, the president, and is beginning to staff up, so at this moment the corporation is not able to provide any services.

Mr. RAILSBACK. Up until now there has been no help to a litigator even as to general research, is that right?

Mr. FREEDMAN. The corporation, as I said, is brand new, so they have not had any capacity. That work was previously done by the backup centers. It would take the corporation some time to develop whatever capacity it would seek to develop, so we are faced with a crisis in any event at this point, even if the corporation were to assume those responsibilities.

Mr. RAILSBACK. And it is your belief that even if they began now, if the funding expired, say, in March, that it would take a certain period of time even for them to gear up as far as being able to provide general research assistance, is that right?

Mr. FREEDMAN. Absolutely. The backup centers have developed libraries. They have experienced staff that is familiar with working with these problems. That has taken many years to develop. This type of organization cannot be set up overnight.

Mr. RAILSBACK. Let me ask you this. What if anything is inherently illogical about having the corporation handle general research, not specialized research?

Mr. FREEDMAN. That might not be illogical if unlimited funds were available. I think we have been dealing with trying to get the most effective use out of the very limited funds available to the legal services program. There are few enough experts available to do the kind of work that needs to be done, and by having one program that can provide the various functions we provide them most efficiently.

But more than that, there is very little generalized, absolutely generalized, type research that I think needs to be done in a program concerned with meeting the current needs of poor people for legal representation. The research, at least the research that we are engaged in, is oriented to immediate needs and current problems and seeking solutions.

I made a reference before to "think tanks," or to things of that sort. That I think is a concern that opponents of backup centers have had, a misplaced concern, I believe, but a concern that these are a bunch of theorists who sit up in an ivory tower and dream up a better world. Dreaming up a better world may be a gallant activity and there are people who are funded to do that, but I think the task of the legal services program is to assure the best possible professional representation to the client in cases as they arise, and I think we should emphasize that kind of research and technical assistance.

Mr. RAILSBACK. You know, I am cosponsor of the bill, and yet I wonder myself—you indicate in your testimony that a lot of your work deals with Federal statutes and Federal laws. It seems maybe that that kind of generalized research relating to the Federal statutes could very properly be handled by the corporation and that more specialized research, which I can see the need for from a jurisdictional standpoint, should be permitted to be done by a backup center.

What do you think of that?

Mr. FREEDMAN. I think it is clear that the corporation could be providing research activities; particularly dealing with Federal law or national matters. Again we are dealing, as I said, with very scarce moneys and choices have to be made, and I think it would be a serious misallocation of funds to begin to build up that kind of capability when the needs for the direct representation and the research related to that are so essential.

Mr. RAILSBACK. Let me just interrupt to say, on the other hand, say you expand backup centers and say you have instead of 15, say you have 20 or 30, and there are some programs right now like the Catholic University training program, and regional support centers, that you did not list—the Western Center of Law and Social Policy, and it concerns me that you might spend more money through duplicative efforts by having different backup centers handle very general Federal-type national research.

Mr. FREEDMAN. I think the duplication would be more likely if there were regional types of programs set up. I think our position in terms

of this legislation is that that is exactly the kind of question that the board and staff of the Legal Services Corp. should be addressing themselves to.

Mr. RAILSBACK. Yes.

Mr. FREEDMAN. And should have the flexibility to deal with as appears to them to be most rational and most likely to serve the clients of the program best, and the problem we have now is that the corporation is just beginning to look into this area, but under legislation that raises serious questions about the manner in which they can provide those services. And I think that would be the task of the Congress to then ask the corporation how it has provided the services and perhaps determine whether that appears to be sensible.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. The gentleman from New York, Mr. Badillo.

Mr. BADILLO. Thank you, Mr. Chairman. I want to thank you, Mr. Freedman and Mr. Lanigan, for your excellent statements which will be very useful to us, particularly when we get to the debate on this matter on the floor.

I just want to pin down a couple of things very precisely. There is no question, is there, that the functions of research, training and technical assistance are now required to be carried out by the Legal Services Corp., is that right?

Mr. FREEDMAN. As a general matter, that is so. The statute does say research, training, and technical assistance related to the delivery of legal assistance and in the legislative history it is made clear, I believe.

Mr. BADILLO. So there is a clear mandate that the Legal Services Corp. must carry out that function, right?

Mr. FREEDMAN. Certain of those functions, that is right.

Mr. BADILLO. Now, you have the backup centers—they have in fact been carrying out this function in some cases for a period of over 10 years.

Mr. FREEDMAN. That is right.

Mr. BADILLO. So, therefore, if that function must be carried out and the corporation just got started and has only had, I believe, four meetings, it would take them quite some time just to develop the expertise that your centers have had.

Mr. FREEDMAN. Yes.

Mr. BADILLO. Now, from a legal point of view, since we are all lawyers in this committee, do you think that it is really possible to separate the function of legal litigation and research as a matter of providing total services to a client, in this case the poor?

Mr. FREEDMAN. No, I do not.

Mr. BADILLO. So that from a practical point of view, from a professional point of view, rather, there is no law office that would carry out this activity. In other words, you might—some people might say, well, why don't you hire some of the counsel in the backup centers since they have the expertise over the last 10 years. They would carry out the functions. But then the moment they get to work in the Legal Services Corp., they would be cut off from the litigation function and therefore their knowledge would come to an end at that point. They

would not be able to continue to be immersed in the problems, isn't that so?

Mr. FREEDMAN. That is right.

Mr. BADILLO. So either way that you do it, it is impossible to maintain the function as an integrated function. The practical problem is that if you are carrying out a law office, you must have the research function and the litigating function together. You don't research in the abstract and you don't train lawyers in the abstract. If the function is a mandate of the law and we have agreed it is, and the Corporation has a duty to—is prohibited from litigation, then inherently it is a contradictory mandate if you are not allowed to delegate the responsibility to a group of people which have the litigation function.

Mr. FREEDMAN. That is our position.

Mr. BADILLO. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from New York, Mr. Pattison.

Mr. PATTISON. I have just a few questions. The legislation, 7005, would not in any way guarantee the continuation of the backup centers, would it?

Mr. FREEDMAN. Absolutely not. It would leave it up to the Corporation to decide how it wants to provide the service. We are rather confident that we have the goods to sell to the corporation and will convince them, but we stress that this legislation is not mandatory in any way. It is authorizing.

Mr. PATTISON. And you would have to enter into an annual contract or arrangement with the Legal Services Corp. or—and make those arrangements with them which they could change at any time, at the end of the period of the contract, isn't that correct?

Mr. FREEDMAN. That is right.

Mr. PATTISON. I have no further questions.

Mr. KASTENMEIER. Thank you both, Mr. Freedman and Mr. Lanigan, for your testimony this morning.

Next, the Chair would like to call the Chairman of the Board of Directors of the Legal Services Corp., Dean Roger C. Cramton, who has testified in other capacities before this subcommittee a number of times. You are most welcome.

We are very pleased to have you here in your new job.

TESTIMONY OF DEAN ROGER C. CRAMTON, CHAIRMAN, BOARD OF DIRECTORS, LEGAL SERVICES CORP.

Mr. CRAMTON. Mr. Chairman, members of the subcommittee, it gives me great pleasure to return in a new capacity to testify before this portion of the Judiciary Committee, and I am especially delighted that this subcommittee has undertaken responsibility for oversight of the legal services program because I have such confidence and respect in the judgment of the chairman, with whom I have had a long association, and Mr. Railsback and Mr. Pattison. I haven't had the pleasure of meeting Mr. Badillo, but this has been a fine, fine committee and the legal services program is extremely fortunate that it is this group that is going to look after it.

I have a prepared statement which I am not going to read. There are lengthy attachments to it which I hope will also be included in the record of the hearing along with the statement.

Mr. KASTENMEIER. Without objection, your statement in its entirety and its attachment will be received and made a part of the record.

Mr. CRAMPTON. What I would like to do is make a few brief remarks and leave as much of an opportunity as possible for questioning.

The Legal Services Corp. is a little more than 3 months old. The Board of Directors held its first meeting in mid-July, only a few days after completion of the appointment process, and we have since then held three additional 2-day Board meetings, not to mention a very large number of committee meetings. We have, I think, a very able hard-working board that is going to expand and improve the legal services program in the United States.

Three matters have absorbed the majority of the time of the Board. The first one is money. Our appropriation request for fiscal 1976 was rushed to the Congress just in time to be included in the main appropriation bill. Congress has now appropriated \$88 million for the Corporation for fiscal 1976, a substantial and needed increase over the funds available in prior years.

We are now at work on a supplemental appropriation request for fiscal 1976 which will seek funds for the alternative delivery system study mandated by the act and for several other unfunded items, and the preparation of our appropriation request for fiscal 1977 is taking a great deal of time and effort.

A second matter has been the selection of a president. An extremely broad and open search for the most qualified person to serve as president of the Corporation has been concluded recently with the selection as president of Thomas Ehrlich, the current dean of the Stanford University Law School. He will assume full-time duties on January 1, 1976. He is working approximately half-time for us now.

I am also pleased that Mr. Ehrlich has persuaded Clint Bamberger, of Catholic University, to serve as executive vice president. With two persons of this caliber in charge of its staff, the Corporation should live up to its great potential.

Much of the attention of the Board has been necessarily devoted to a third area, establishing an operating entity with personnel, space, and operating policies. It is kind of hard to do anything unless you have a telephone, a copy machine, and a few people to run them. Our task in this area has proven especially difficult, and the Corporation has not yet completed the transfer from the Office of Legal Services of personnel which it desires to hire. We have had some very difficult and vexing problems in that area.

While our small transition staff had done an excellent job, its limited size and the absence of permanent leadership has delayed us in addressing some major issues. That has not been the case, however, with the backup center question. The backup centers have been the subject of reports, discussion, and action at each meeting of the Board. Our initial effort was to insure the orderly continuation of essential support activities until we had sufficient time to evaluate them and to make any necessary structural changes required by section 1006(a) (3) of the act.

Partial success resulted on July 23 when Mr. Gallegos, the Director of the Community Services Administration, extended all grants, including the support centers, until March 31, 1976. The Board then turned its attention to the steps that would need to be taken in order

to evaluate the support centers, to determine which of their activities should be continued, and in what form they could be continued, and to make any necessary structural changes and refunding decisions.

When the Board concluded that there was a risk that this complex process of evaluation and decisionmaking might take somewhat longer than the time remaining until March 31, 1976, the Board directed me to write Mr. Gallegos to ask him to consider whether it would not be desirable to forward fund for an additional 3 months, that is, through June 30, 1976.

Since Mr. Gallegos took no action on this request prior to the termination of his authority in mid-October, the Corporation must now complete its evaluation and decisionmaking by March 31.

The staff plans to make detailed recommendations to the Board by mid-February and if they are approved, to implement them by the end of March if that is possible. If that cannot be done without serious disruption in essential ongoing support activities, the Corporation has been advised by counsel that it has authority to deal with this emergency by means of short-term or interim grants.

Although the Board has given a great deal of attention to matters relating to the backup centers—they are detailed in my prepared statement and in the attachments—it has not given formal consideration to H.R. 7005. At this time the corporation neither supports nor opposes the proposed legislation. It should be remembered that the Corporation is a relatively new entity which is in the process of assembling a staff and meeting numerous responsibilities placed upon it by the act.

As you know, that act contains a very large number of limitations on the Corporation, its grantees, and their employees. Many individuals might prefer that one or another of these limitations had been either dropped or drawn in somewhat different language. But we have started with the premise that Congress knew what it was doing, that it created a sound structure, and that it imposed limitations on the Corporation for what it believes were good reasons.

A new entity in our view should take seriously the provisions of the act which creates it and attempt at the outset at least to give them intelligent and workable meanings. Thus, the Corporation is endeavoring, during its initial months, to operate within its basic charter. There will be opportunity enough at a later time when the Corporation is informed by the lessons of experience to propose amendments to the act that will improve the legal services program.

It is argued that section 1006(a)(3) of the act requires an arbitrary separation of generalized research and of training, technical assistance, and clearinghouse activities from litigation-related activities, with the Corporation required to perform the former and its grantees and contractors the latter. If so, there is nothing inherently illogical or unworkable in such an arrangement, although difficulties in classification of particular activities are bound to arise. Theory is one thing, however, and actual practice quite another.

There is always the possibility that the Corporation's attempt to restructure essential support services in conformity with present section 1006(a)(3) will lead it to conclude that this provision interferes with the effective delivery of high quality legal services to the poor. If and when the Corporation reaches that conclusion, it will request and support appropriate changes in the act.

Until we are in a position to make this judgment on the basis of experience, however, we take no position on the proposed legislation. Thank you.

Mr. KASTENMEIER. Thank you, Dean Cramton. I personally would like to repeat my own pleasure in the fact that you were nominated to be Chairman of the Board of this new Corporation. I congratulate the nomination, and I am sure you will do an excellent job, notwithstanding the fact that we may from time to time have some differences as we have had in the past, but I am sure that nonetheless we will be able so far as the Corporation and the committee are concerned, to conduct a useful dialog on various issues.

In connection with that which has confronted the Corporation's very short existence, I, of course, sympathize with the monumental tasks which you have faced. I do note, however, that H.R. 7005 was cosponsored by six of the seven members of this subcommittee. It was a bill that was introduced on May 14 of this year. And while you indicate that the Board has not yet had time to consider this matter and is not definite as far as supporting the legislation or opposing it, and that it is engaged in a review of the question of an evaluation of the backup centers and what future they might have, nonetheless I am somewhat distressed that the Board could not reach an opinion.

I say that because you were called on to do many things without very much time, including preparing a budget, and I am personally regretful that Mr. Gallegos didn't forward fund all present activities of the Corporation until June 30, 1976. I, too, failed in the effort to have him do so prior to the expiration of his responsibility for funding these activities.

One of the problems is the future of the backup centers, and although it is reasonable for the Board of the Corporation to go on for an extended period of time for evaluation and to exercise some discrete judgment, the facts of life are that legislatively, if in February or March you and the Board do want language such as in H.R. 7005, we will be unable to then produce it.

We, in anticipation of March 31, 1976, are required to address the question now in terms of what is anticipated in a legislative time schedule. And it is for that reason that I regret that you cannot be of help in indicating what the Board today feels about the bill before us. However, I wish to ask you some questions which may clarify your views.

First of all, Mr. Cramton, do you think the Corporation should have the discretion to determine how to fund support services; that is to say, whether by grant, contract, or as an in-house operation?

Mr. CRAMTON. I think it should have the discretion and authority that the legislature wants to give it. I mean, that is like asking me the question about what is my personal view about the restriction on desegregation cases or abortion cases or the staff attorneys engaging in political activities, and the like. I mean there are many restrictions in the statutes. I may have personal views, which I don't think are particularly relevant, on one or the other of them, but I don't think you would be interested in my views on them if I were not Chairman of the Board of Directors of the Legal Services Corporation. Since I am here in a representational capacity and the Corporation has

taken the position that very recently it has been given a charter, it shouldn't start with the question of trying to think what is wrong with that charter, but try to build an effective legal services program that lives with it. If the Board finds that we can't live with the present legislation after experience shows that one or another of these restrictions turns out to be unwise, then we will come to the two committees that are responsible for legislative oversight and say that we think this is interfering with an effective legal services program and won't you amend it, and we may have a number of changes to suggest next spring and summer.

There will be an appropriate early opportunity. We are going to have to come to Congress for an authorization, for an appropriation for fiscal year 1978. It is my understanding that the new Budget Act requires us to get that authorization, if possible, prior to May 1 of next year. So that we will be having substantive hearings before both Houses of Congress on the question of everything that the Corporation has done thus far, its ideas about the act, and how it might be amended and improved, and that is going to come up quite early next spring.

Mr. KASTENMEIER. Let us assume nothing further is done legislatively until next spring and then perhaps some recommendation might be forthcoming. What will be the future of the 16 national backup centers after March 31, 1976?

Mr. CRAMTON. That would depend upon the results of the evaluation and of the decisionmaking that then accompanied it, and it might vary from organization to organization.

Let me use an example. These are all just illustrative and I don't want to indicate views, but there seems to be some consensus that the clearinghouse operation has to be carried on by the Corporation under the statute, and there also seems to be a consensus that there isn't much of a problem in terms of putting the existing employees now working for the clearinghouse on the corporate payroll, carrying them on after March 31 as corporate employees and carrying on that activity in much the same way now and perhaps even in an expanded form with new funds if we think that is necessary.

What we will do prior to that time is evaluate each one of these organizations, evaluate the quality of what it is doing and whether that function ought to be continued on Federal funds in any event.

Second, we have to interpret this complicated statutory provision and apply it to the activities that they are carrying on and decide whether the corporation has to carry on a particular function or whether a litigation grantee or contractor can carry it on and allocate the responsibilities and the people.

Now, in some cases it may mean that some of these people stay right where they are; doing what they are doing. It may mean some of them become employees of the Corporation. It may mean some activity cannot be carried on at all and then we will have to face the ultimate issue of whether this language is so restrictive and harmful to the effective conduct of the legal services program, and as I have said, if we reach that conclusion, I am confident the Board will want the statute amended.

Mr. KASTENMEIER. Let me ask you this. In your view, would enactment of H.R. 7005 harm or impair the operation of the Legal Services Corporation in any respect?

Mr. CRAMTON. Not at all. We do not oppose it. If Congress wants to give us broader authority, we would be delighted to exercise it. We will not be in a position of an organization that is unwilling to undertake new challenges.

Mr. KASTENMEIER. I take it, in view of your present evaluation, that if Congress passed H.R. 7005, it would not necessarily lead you to conclude that the 16 backup centers need be further engaged in their entirety, but that you would still be free to exercise the discretion in choosing which centers to continue, is that not correct?

Mr. CRAMTON. That is correct. It would allow us to conduct the evaluation over a longer period of time and while the local legal services community programs are also being evaluated. It would release the time urgency under which we are now operating. I think the task before us is not impossible, but everyone always wants more time or would like more time to do something that is difficult, and clearly the statute as written poses us with a difficult task. We are perfectly prepared to assume that task and do not ask that you relieve us of it, but if you want to relieve us of it, we will not object to that.

Mr. KASTENMEIER. I am going to yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I also want to congratulate you on your new job. I have a concern from a practical standpoint. Assume that a lawyer for a project is about to litigate and say he is in Illinois and he has a rather technical landlord-tenant problem. If that program was not suitably staffed, as far as any kind of a research function, that lawyer would have to call the Corporation office to try to get some good research done on that particular issue regarding state law. I can see in that kind of a specialized research area real chaos, and I wonder if we aren't being very impractical.

We are not recognizing a difference between an information dissemination or training and technical assistance and general research. In other words, I am personally concerned about the ability to perform with adequate staff special research in a special jurisdiction or particular State jurisdiction. I can see calling a central corporation and saying, I have got to go to trial in a few days, and I need an answer. I don't see where they are going to get it.

Mr. CRAMTON. I guess I don't quite follow why the specialized litigation activity of a research nature, of a cocounsel nature, can't be provided consistent with the statute. Although the Board has not reached this question, I personally don't find anything in the statute which says you can't have a specialized grant, litigation grantee, that is, an organization that represents eligible clients only, which can come in as a specialist or as cocounsel when a community-based organization needs some help and assistance. There is nothing that I see in 1006(a)(3) that says that research connected with representing a client can't be done. If that were true, the attorney sitting in his office couldn't reach up and bring down a law book or look at a case.

Mr. RAILSBACK. Then you are agreeing with me, that it is desirable that that function be performed.

Mr. CRAMTON. Oh, it is absolutely essential for good lawyering. You have essentially line attorneys who are generalists for the most part, and they will be in small offices which many of the offices are. If you have three attorneys in an office when you are dealing with poor peo-

ple—and some cases are divorce, some bankruptcy, and some consumer matters, and occasionally a complicated welfare matter or matter dealing with HUD—you can't expect a private practitioner or generalist to know everything about that problem.

And, just as a private lawyer might have to go to an expert, a specialist lawyer is going to have to be made available in the legal services system. I don't think there is anything in the statute that prohibits the Corporation from making grants to specialized litigating outfits.

Mr. RAILSBACK. What about backup centers?

Mr. CRAMTON. I avoid the use of that terminology, but let's say specialized litigation support centers, that doesn't engage in generalized research.

Mr. RAILSBACK. Personally, I am not as sure as you are about your authority to do that under the existing law. That is really, as far as I am concerned, the purpose of the bill. It is permissive. Your Corporation is the one that will decide that. As I understand the thrust of the bill, and I think maybe it goes further than I would, by also saying information and contract information, dissemination and technical assistance and training—I may prefer to have the Corporation do that. But at a minimum, I want to spell out that your Corporation can, in fact, have your backup centers doing research. I am not sure that is clear. You seem to think it is.

Mr. CRAMTON. Doing research of the kind that lawyers do in connection with representation of a client. Yes.

Mr. RAILSBACK. Let me just finish and then I will turn it over to you. I will even go further and say I think you may be incorrect. When I read this thing it puts it in the negative. It says this. Section 1006 (a) (3). Let's go back to: "Three: directly and not by grant or contract the following activity relating to the delivery of legal assistance. A Research."

I think that is unclear at best. I think at a minimum we have got to clear it up so that you can do what you say you want to do and which I agree with you must be able to be done.

Mr. CRAMTON. Well, I think it is unclear in a sense that it needs interpretation in order to be intelligent and be consistent with the other purposes of the act.

The Corporation is told it has to carry on a high quality economic effective legal services program. It is told it can't interfere with the attorney-client relationship. It is told poor people are entitled to the same range and scope and quality of services as people who can afford to pay for lawyers. And that often means going to a lawyer who knows something, a specialist, rather than somebody who is just an amateur and generalist.

Mr. RAILSBACK. It says this, "in delivering legal assistance." In delivering legal assistance, you cannot contract out research.

Mr. CRAMTON. But it must mean generalized research, you would have to argue, and not the kind of research—

Mr. RAILSBACK. Let's clarify—

Mr. CRAMTON [continuing]. That a lawyer does in representation of his client because if it means you can't even look at a lawbook, the act would have such an internal contradiction it would fall on itself.

Mr. RAILSBACK. That is right.

Mr. CRAMTON. It would mean that any community-based legal services attorney couldn't look at a lawbook because that is legal research, right?

Mr. RAILSBACK. No. You know what it might mean? It might mean that—well, what you would have as a practical matter, you would have your litigators doing their own research perhaps with inadequate staffing, but unless we clarify it—

Mr. CRAMTON. It doesn't say anything about the organizing of it. It doesn't prohibit a national service. It doesn't prohibit a regional service. There is nothing that says and there is nothing in the statute that talks about specialized or nonspecialized representation of clients.

Mr. RAILSBACK. You and I agree what they should be able to do, but the point is it is not very clear. That is the whole thrust of this legislation.

That is all.

Mr. KASTENMEIER. The gentleman from New York, Mr. Badillo.

Mr. BADILLO. Thank you, Mr. Chairman.

Dean, the problem is that you say that you assume that Congress knows what it is doing and that legislation has to be intelligent and consistent. That is maybe true in most cases, but as you know, it has been found not to be true by the Supreme Court in many cases. And one of the reasons that this committee is a specialized committee—all of us on the Judiciary Committee are lawyers—is because of the fact that we are dealing with a profession that has certain requirements to properly be able to carry out the profession.

Now, this committee did not recommend that particular amendment. As you know, that was an amendment made on the floor by someone not a lawyer, and as you know, it had motivation—nothing to do with the law, but with a certain hostility toward certain groups.

Now, here in this committee we are backtalking as lawyers, whatever our position may have been on the need of the client to be represented or whether the backup centers were using their power to embarrass whoever was President or not. Now we are talking as lawyers, and as a lawyer if that provision did not mean that you could not give out grants, then the effect of Mrs. Green's amendment was totally vitiated.

Now, as a lawyer can you conceive of being able to carry out any law office without getting technical assistance from anyone, from time to time, as it may be required?

Mr. CRAMTON. I can't conceive that the 1006(a)(3) means that a lawyer engaged in a legal services field program can't go to a continuing legal education program or—

Mr. BADILLO. Let me put it this way.

Mr. CRAMTON [continuing]. Or, if you have a large office as New York City or Baltimore or Los Angeles, that that office can't have an internal training program by which it trains its own young lawyers. In fact, there is another provision in section 1005 that deals with the question of training programs.

Mr. BADILLO. Let's be very precise. It didn't say that you can't have the backup centers. If Mrs. Green had said that we would all understand. What happened, because they didn't want to mention the backup centers, was that she prohibited using technical assistance. The best organization possible for a certain type of legal assistance is a

backup center that is headed by a gentleman from New York. You cannot give them a grant. You can't give it to anybody.

Now, the interpretation already made, that they can't get a grant because they are backup centers, that was the interpretation Mrs. Green intended. In trying to eliminate the backup centers, we understood when the amendment was made that it was made so broad that it eliminated all the possibilities of being able to hire a specialist, a group of specialists to carry out this activity.

Mr. CRAMTON. Well, I read the legislative history differently. I read the legislative history in the House as expressing a concern about the combination of roving "think tank" generalized research activities looking for a cause, and so on, with litigation. But the act itself allows research activities of a generalized character, information activities of a generalized character, and training activities to be carried on by the corporation, and allows all of the recipient organizations who are actually representing clients to do everything they have to do to adequately represent those clients.

Mr. BADILLO. I yield to the gentleman.

Mr. RAILSBACK. Thank you. I may be wrong, but I think maybe Edith Green was very concerned about backup centers. I think that may have been a general feeling.

Mr. CRAMTON. The legislation doesn't change that and one legislator doesn't make legislative history. This is an amendment that was passed by the House, but which ultimately both Houses had to include and in which there is legislative history in the Senate as well as in the House.

Mr. BADILLO. Would you concede that it is possible, given the language, and give the legislative history, that it is possible to interpret the legislation to say that you shall not have the right to give out grants to a right-wing group, a left-wing group, or any group, that you have to do this in-house?

Mr. CRAMTON. Grants for what?

Mr. BADILLO. For technical assistance, for training, and for research. That is what it says. It says directly and not by grants. Would you concede that it is possible that it may mean just that, that you cannot give out subcontracts to any lawyer or firm of lawyers, that you have to within the house itself, within the Legal Services Corp., carry out these activities? Is that not a possible interpretation?

Mr. CRAMTON. I think it is exceedingly unlikely. Let me follow that up by saying that—

Mr. BADILLO. My point is that it is irrational for a law firm. That is the point. It is not a question—I said if that is the interpretation, it doesn't make sense given the legal profession. That is the point we are trying to bring out and we are trying to bring out that those—the amendment was debated not by lawyers, but by people who don't quite appreciate the requirements of the legal profession.

Mr. CRAMTON. Even in the House I recall statements by some of the major participants in this legislation, such as Representative Quie, Representative Ashbrook, Representative Perkins.

Mr. BADILLO. They are members of the Committee on Education and Labor.

Mr. CRAMTON. But they were the people who took the principal burden of arguing this question.

Mr. BADILLO. We are talking now as being in charge of the legal services. That is why it is before the Judiciary Committee. We are now talking about the narrow area of how you practice law and we are saying if, in fact, it is a possible interpretation that you cannot give a grant to law firm or lawyer for research, training, and assistance, and you have to do it in-house, that that makes it impossible to carry out the functions.

Mr. CRAMTON. We are not talking about possible interpretations. We are talking about interpretations which are going to be given to this language by the people who have the responsibility of administering it.

In the first place, that is the Board of the Legal Services Corporation and the Board will give it a reasonable construction in the light of the whole act which is designed to carry out an effective legal services program. You can't read it all alone. You have to read it in connection with the other provisions of the act and the Board will do that, and then if people disagree with that interpretation, we will have a suit, I am sure, in the Federal court, and some judge will decide whether or not the Legal Services Corp. interpretation is a reasonable one.

I am inclined to think we are going to be good enough lawyers and that the position we are taking is going to be sound enough and based on legislative history, based on a reasonable interpretation of the whole act, so that we will win in the sense that the reasonable interpretation we give this statute a Federal court will accept. Maybe I am wrong. Maybe some Federal judge is going to read this language in what I would think was an extreme or absurd manner and then we will be the first ones, we will be back up here saying this has got to be changed.

Mr. BADILLO. And is your present interpretation that you could give a grant to someone carrying out functions similar to that being carried out by the backup centers now?

Mr. CRAMTON. That question is too broad, in part because I don't know all of the functions and activities the backup centers engage in, but they engage in a multiplicity of functions. The functions, for example, of preparing a newsletter which—

Mr. BADILLO. Let's say research. Research.

Mr. CRAMTON. Generalized research in which you are developing new tactical theories, preparing model legislation, or model briefs, the answer is no, quite clearly. Research as cocounsel in connection with a test case or a case that is on appeal or a case that is going into an intricate problem on what a health, education, and welfare regulation on social security means, and so forth, those things seem to me to be contemplated by the act. That is partly what our study is to determine. What activities and functions are these organizations carrying out? Which ones can be continued? Which ones ought to be continued and in what structure and form?

Mr. BADILLO. I think my 5 minutes are up, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman, and Dean Cramton. I am sorry I was unavoidably absent, present at another committee, and I should say first of all that I am on the board of directors of one of these centers and I expect to resign immediately—this matter just came to us—and that I was one of the original founders of the National Con-

sumer Law Center in Boston and, as a result, I probably shouldn't even disclose my basis or prejudice, but if I understand this correctly, let me ask this simple question, just one question.

The ambiguity of the present statute gave rise to what we are proposing here and as I read the present statute that is being proposed, we don't mandate anything on the Board to you people, but H.R. 7005 simply allows you to do these things if in fact you want to. Wouldn't it be simpler for you to say, well, we would welcome all the discretion we can get. We may or may not use the backup centers, but at least this would clear up the ambiguity, that you wouldn't have the possibility of a law suit, and so forth.

Mr. CRAMTON. If the Congress wants to give us that authority, fine.

Mr. DRINAN. Well, all right. Thank you.

Mr. CRAMTON. We want the Congress to make that choice. We don't want to be sandbagged by people who are not so friendly to legal services as members of this committee. We have to deal with an Appropriations Committee that is composed somewhat differently and has somewhat different views on some of these questions, and we would like, if the choice is to be made, we think it involves questions of policy which the people of the United States through their elected representatives ought to make. We are not in the position on the basis of experience to say that what you came up with a very short time ago is unworkable. If we find out it is unworkable, we will seek change. If you think it is unworkable now, you change it.

Mr. DRINAN. Well, nonetheless, you would be a welcome and grateful recipient of this new discretion if we gave it to you.

Mr. CRAMTON. We would not oppose it.

Mr. DRINAN. Thank you very much.

Mr. KASTENMEIER. The gentleman from New York, Mr. Pattison.

Mr. PATTISON. I think I understand your problems of time and I remember getting a letter from a constituent on November 20, after November 7 when I was elected, which said you have been in office for a month now and you haven't done a damn thing. So I understand that problem.

But I do think it is very important and I think it would be very helpful to us and to the Congress if we had a statement from your organization about this legislation, and I understand your problems in coming to a conclusion on it, particularly in light of the legislative history, whether that be found in the debates in Congress or in the newspaper reports. There was a very clear bias against backup centers that motivated the amendment that we are trying to change here. And I am wondering if there is a chance or if there is any schedule of your Board of Directors to address themselves to this point in the near future. It doesn't have to be done immediately.

Mr. CRAMTON. We have a regular timetable and a pattern of evaluation of the support centers and the studies are underway now, and the hope is that it will be completed early next year.

Mr. PATTISON. I understand that. I understand that is the substantive question as to whether or not you would want to think you are going to come to a conclusion that backup centers are useful or not, but just from the standpoint of this legislation which would give you the option, it would seem to me that without committing themselves to any

course of action, your organization could come to the conclusion one way or the other that they would like to have this flexibility.

Mr. CRAMTON. To be candid, I think one danger of that, at least at the outset before we have evaluated these organizations and know very much about, is that it will tend to be interpreted as just a total approval of everything the backup centers do and have ever done and want to do, and in the public mind it would tend to be associated with just a kind of blanket endorsement—

Mr. PATTISON. On the other hand—

Mr. CRAMTON [continuing]. And disapproval by the Board of the fears and sentiments and worries that underlay the Green amendment. And—

Mr. PATTISON. Yes; I understand.

Mr. CRAMTON. And we haven't looked at these organizations. We know very little about them. What we have heard and what we have seen in terms of past evaluations indicates that on the whole they have been doing a very good job, but before we can put it in the posture of a blanket endorsement, we want to look at them, study them, and try to determine whether or not research is better conducted removed from a litigation involvement.

Mr. PATTISON. Oh, yes; I understand.

Mr. CRAMTON. That you can have separate people who are engaged in litigation, including specialized litigation, that you can have other people who are more thinkers. It doesn't mean they don't talk to each other. You people are not incapacitated from legislating because you are not engaged as lawyers any more.

Mr. PATTISON. I understand. It is a question really of the option. I would suggest there is an additional danger that the Legal Services Corporation ought to consider and that is the danger that if in fact your study doesn't get completed and if you decide that under the law you have the ability to do these things in spite of the Green amendment, that you are likely to end up with more antagonism on the same theory, the very current theory that you hear a great deal of in Congress, that we passed a law to accomplish something, meaning the whole Congress passed a law to accomplish something, and they are going right ahead and doing it anyway.

Now, that creates all kinds of institutional fury in this place and I would think it would be better from the standpoint of the Legal Services Corporation to at least address itself to the possibility of having the option and make it very clear in what statement you make that you are not committing yourself in any way to the backup centers or what they have done and that you are looking at that very carefully, but that having the option would be better than not. Lots of options you wouldn't take no matter what happens, but having this option doesn't cost you anything.

Mr. CRAMTON. As the Board struggles with this question at each successive Board meeting and the difficulty and complexity of interpreting and complying with the statute, it may at some point reach the conclusion that you are suggesting.

Mr. PATTISON. Yes, I would urge them to do it, to come to some conclusion on that and as quickly as possible. I think you are involved in programs where you are under the axe and you had short-term

funding and you weren't sure if things were going to be continued and keeping a staff together is difficult, since people are going out and looking for other places to work because they don't know for sure if they are going to be working in March.

Sure, maybe you could hire them to work in the Legal Services Corporation. Maybe they are not interested in that. And the whole thing starts to crumble when you are working on that 3-month termination point, and so I think it is important that we get this thing resolved just from a morale and structural standpoint as quickly as possible.

Mr. CRAMTON. I share that view, that the present situation does create a lot of uncertainty and instability and the sooner and the better it is resolved, the better off the legal services program will be.

Mr. PATTISON. Thank you.

Mr. KASTENMEIER. I think if I understand Dean Cramton's position, it isn't that having the option costs anything. It is asking for the option that perhaps will cost them.

Mr. PATTISON. I understand.

Mr. KASTENMEIER. In any event, and whatever this subcommittee or the Congress does, I suppose it should not suggest that we approve the activities of all the backup centers. Obviously, should this subcommittee move forward with this legislation, that judgment and that discretion has to be exercised carefully by the Legal Services Corporation in its own competent deliberations.

In any event, Dean Cramton, the subcommittee deeply appreciates your appearance this morning and we wish you and the Corporation the very best.

Mr. CRAMTON. Well, I wish you well in dealing with this legislation. We look forward to dealing with you over the years ahead.

[The prepared statement of Dean Cramton follows:]

STATEMENT OF ROGER C. CRAMTON, CHAIRMAN, BOARD OF DIRECTORS,
LEGAL SERVICES CORPORATION

My name is Roger C. Cramton. I am Dean of the Cornell University Law School and Chairman of the Board of Directors of the Legal Services Corporation. I appreciate the Committee's invitation to testify at this hearing on H.R. 7005.

Before addressing H.R. 7005, I would like to take a few moments to bring the Committee up to date on the activities of the Corporation. The eleven-member Board of Directors was confirmed by the Senate on July 9, 1975, and since then has held four full, two-day meetings in Washington, D.C. The ninety-day transition period provided by the Legal Services Corporation Act has now run, and on October 14, 1975, the Corporation assumed full responsibility for the operation of the nation's legal services program. Congress has now appropriated \$88 million for the Corporation for fiscal 1976, which is a substantial and needed increase over funds which were available for legal services in prior years.

I am particularly pleased to be able to advise the Committee that Thomas Ehrlich, the current Dean of the Stanford University Law School, has accepted our offer to become the Corporation's first President and will assume full-time service on January 1, 1976. I am also pleased that he has recommended to the Board that E. Clinton Bamberger, Jr., Dean of the Columbus Law School of Catholic University, be designated Executive Vice-President. In short, I think we are off to an excellent start; under the leadership of Messrs. Ehrlich and Bamberger, the Corporation will take great strides towards fulfilling its statutory responsibility of providing high quality civil legal services to the nation's poor.

H.R. 7005 would amend Section 1006(a) (3) of the Legal Services Corporation Act so as to permit the Corporation to undertake research, training, technical assistance and clearinghouse activities either directly or by grant or contract. This amendment would have a direct and immediate effect on the sixteen backup

centers which have been funded by Community Services Administration under grants which expire on March 31, 1976. Detailed information concerning these centers has already been included in the record of this hearing. Some provide specialized legal services in a variety of substantive areas, such as education, housing and economic development, consumer law and welfare law; others provide specialized legal services to discrete client groups, such as migrants, senior citizens and juveniles; and others provide training technical assistance and clearinghouse services to legal services' attorneys employed by recipient organizations. As presently written, Section 1006(a)(3) appears to require the Corporation to sever the research, training, technical assistance and clearinghouse activities of these "backup centers" from litigation activities on behalf of eligible clients and continue the former activities, if at all, through a staff employed and directly controlled by the Corporation.

The application of Section 1006(a)(3) to these sixteen centers is not an easy matter. For example, the precise meaning of Section 1006(a)(3), and particularly its applicability to research activities, is not at all clear. Moreover, it cannot be applied by the Corporation in a vacuum; rather it must be reconciled with provisions of the Legal Services Corporation Act which require the Corporation to provide "high quality" legal services as well as with Section 3(d)(1)(D) of the Act's transition provisions which requires "... the orderly continuation by [the] Corporation of financial assistance to legal services programs and activities assisted pursuant to the Economic Opportunity Act of 1964..."

Because of the importance and complexity of the issues raised by Section 1006(a)(3), the Board of Directors has given early and detailed consideration to these matters. A substantial percentage of our time during these past several months has been devoted to support centers. Initially, the Board asked the transition staff to determine whether it would be possible for the Corporation to complete the necessary structural changes required by Section 1006(a)(3) by March 31, 1976, the day on which all current grants assumed from the Community Services Administration are to expire. (See letter from Bert Gallegos, Director, Community Services Administration to Roger C. Cramton, dated July 23, 1975 attached hereto as Attachment A.) Thus at its August 4-5 meeting, the Board of Directors adopted the following resolution:

"Resolved, That the transition staff, including the OMB Management Team, in conjunction with interested parties, study and report to the Board prior to October 1, 1975, a recommendation as to the position the Corporation should take with respect to the decision announced by the Community Services Administration letter of July 23, 1975, to the Chairman of the Board to fund all grantees and backup centers through March 31, 1976. The recommendation should discuss the alternatives available to the Board in implementing Section 1006(a)(3) of the Act if it becomes necessary to do so on or before March 31, 1976."

Pursuant to these instructions, the staff prepared an extensive report which it presented to the Board at its September 8-9 meeting. Parts of the report are attached hereto as Attachment B. Among other things, that report included a memorandum prepared by Carl Eardley, former Deputy Assistant Attorney General in charge of the Civil Division, and others, analyzing the role of specialized legal services in a large-scale law enterprise like the legal services program. That memorandum concludes that specialized legal services are indispensable to such an enterprise. The staff report also included a memorandum summarizing how the Office of Legal Services has evaluated and monitored the activities of backup centers since their organization in the late 1960's, and a memorandum outlining the kind of in-depth evaluation of existing backup centers which the Legal Services Corporation could itself undertake. Finally, the staff report included a memorandum prepared by counsel which discussed, among other things, the applicability of Section 1006(a)(3) to current backup center activities.

On the basis of this study, the transition staff recommended that the Board of Directors ask the Community Services Administration to forward-fund the backup centers through June 30, 1976. The staff believed that these additional three months were necessary to ensure that the Corporation would have sufficient time to evaluate the backup centers and to make the program and structural changes required by Section 1006(a)(3) without risking serious disruptions to essential support services. This recommendation was based on the transition staff's belief that the Corporation's decision-making process with respect to backup centers should proceed through two stages, namely, evaluation and decision-making and action, as follows:

"A. Evaluation. Before the Corporation can make any judgment with respect to the continuation of backup services, it is necessary to undertake an in-depth

evaluation of the quality of the services currently being provided. This evaluation must discover, analyze and describe those activities which are directly related to the provision of legal services to eligible clients and those which are not. To this end, the transition team has already requested reports of the litigation and other activities at each center. Most of these have already been supplied.

"B. *Decision making and Action.* There are a number of thought-provoking, time-consuming actions that will be required after the evaluation.

"(1) A careful balance of management, personal and legal considerations will be required to determine which, if any, Centers should be relocated geographically and which can be continued by the Corporation as a branch at a location away from the Corporation's headquarters.

"(2) Many of the Centers have been encouraged by OLS to obtain and have, in fact, obtained grants from funding sources other than the Federal Government. These make a valuable contribution to the total capability of the legal services program as a whole. Hasty, ill-prepared actions in restructuring and relocating Centers before each of the funding sources has been approached and satisfied could be costly.

"(3) Some of the Centers have personnel and functions which are difficult to categorize as between those properly belonging to recipients and those properly belonging to the Corporation. The management judgment required to redistribute people and functions effectively, while quite feasible, can best be accomplished with care over time."

At its September 8-9 meeting, the Board of Directors discussed the transition staff's recommendations extensively and unanimously adopted the following resolution:

Whereas, it is impossible to determine with confidence whether the Corporation can complete in time for Board action and implementation by March 31, 1976, the studies and consideration necessary to decide about possible alternatives for implementing Section 1006(a) (3) of the Legal Services Corporation Act (Pub. L. 93-355), but believes it can do so by June 30, 1976.

Resolved, That the Board of Directors hereby authorize the Chairman (1) to inform the Director of the Community Services Administration of this conclusion and (2) to take the steps necessary to complete the requisite studies and consideration as rapidly as possible and (3) to make appropriate lawful plans to continue those relevant programs in operation until those studies and consideration are available for a decision by the Board, and (4) to report to the Board at each meeting concerning progress in this area.

Accordingly, on behalf of the Board of Directors, I wrote Mr. Gallegos on September 11, 1975 (a copy of my letter is attached hereto as Attachment C) and advised him that the Board of Directors did not believe it could implement Section 1006(a) (3) by March 31, 1976, without risking disruption in the provision of essential legal services. I asked Mr. Gallegos to reconsider his decision to forward-fund the backup centers only through March 31. In doing so, I emphasized that this request was being made:

... pursuant to Section 3(d) of the Act and on the basis of our considered judgment that the Corporation will be in a better position to make a rational decision with respect to its obligations under Section 1006(a) (3) if it does not have to make funding decisions with respect to backup centers until June 30, 1976.

As of October 10, 1975, the day on which the Community Services Administration's authority for the legal services program lapsed, we had not received an answer with respect to this request. Accordingly, the obligations we have assumed from CSA will expire on March 31, 1976. With this limitation in mind, the staff is now in the process of developing for the Board's consideration at its November 6-7 meeting, a detailed recommendation with respect to the procedures and activities that must be undertaken in order to comply fully with Section 1006(a) (3). By mid-February of 1976 the Corporation plans to have completed an evaluation of the existing backup centers, an assessment of how essential support activities can be carried on in compliance with Section 1006(a) (3), and a detailed plan for any necessary structural changes and refunding decisions.

The foregoing represents the extent to which the Board of Directors has considered Section 1006(a) (3) of the Act. Although the Board has given a great deal of attention to matters relating to backup centers, it has not given formal consideration to H.R. 7005 and I am therefore not in a position to state the views of the Corporation on this legislation. In short, the Legal Services Corporation neither supports nor opposes this legislation at this time.

It should be remembered that the Corporation is a relatively new entity which is in the process of assembling a staff and meeting responsibilities placed upon it by the Legal Services Corporation Act. As you know, the Act contains a number of limitations on the Corporation, its grantees, and their employees. Many individuals might prefer that one or another of these limitations had been either dropped or drawn in somewhat different language. But we start with the premise that Congress knew what it was doing, that it created a sound structure and that it imposed limitations on the Corporation for what it believed were good reasons.

A new entity must take the provisions of the Act which creates it seriously and attempt to give them intelligent and workable meanings. The Corporation should therefore endeavor during its initial months to operate within its basic charter. There will be opportunity enough at a later time, when the Corporation is informed by the lessons of experience, to suggest amendments to the Act that will improve the legal services program.

It is argued that Section 1006(a) (3) of the Act requires an arbitrary separation of generalized research, training, technical assistance and clearinghouse activities from litigation-related activities, with the Corporation required to perform the former and its grantees and contractors the latter. If so, there is nothing inherently illogical or unworkable in such an arrangement, although difficulties in classification of particular activities are bound to arise.

Theory is one thing, however, and actual practice quite another. There is always the possibility that the Corporation's attempt to restructure essential support services in conformity with present Section 1006(a) (3) will lead it to conclude that this language interferes with the effective delivery of high quality legal services to the poor. If and when the Corporation reaches that conclusion, it will request and support appropriate changes in the Act. Until we are in a position to make this judgment on the basis of experience, however, we take no position on the proposed legislation.

Attachments to Statement of Roger C. Cramton before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary on October 29, 1975.

Attachment A.—Letter of July 23, 1975 from Bert Gallegos to Roger Cramton.

Attachment B.—Memorandum of September 5, 1975 from Louis F. Oberdorfer to the Board of Directors of the Legal Services Corporation including attachments).

Attachment C.—Letter of September 11, 1975 from Roger Cramton to Bert Gallegos.

ATTACHMENT A

COMMUNITY SERVICES ADMINISTRATION,
Washington, D.C., July 23, 1975.

MR. ROGER CRAMTON,

Chairman, The Legal Services Corp., Room 412, Washington, D.C.

DEAR DEAN CRAMTON: Thank you for your letter of July 22, 1975 regarding "backup centers."

For the past year that I have served as Director of OEO-CSA and as head of the Legal Services program, I have made many hard decisions. But specifically, the general policies I enunciated concerning the entire Legal Services activities have worked very well during the past year and in this transition period.

We are all well aware of the sensitive and controversial nature of many aspects of the program. My maintaining impeccable neutrality in the past year has enabled the Legal Services Corporation to come into existence as it did. I will insist on maintaining that neutrality and fairness without injecting my personal opinions—directly or indirectly.

I know you are aware that I am being constantly bombarded and lobbied by many sides of any given proposition or problem.

I would not feel it to be beneficial if I should be forced to spend the next several months giving my opinions to groups or to Congress—or to individual lawmakers.

To preclude such time-consuming activities and to prevent my getting into a partisan role, I will continue the policies I began one year ago. I have expressed this modus operandi to you personally on July 16; and I have expressed these same views to the Legal Services board on July 12 and 13. On July 21, I reiterated this position to Congressman Robert W. Kastenmeier and Congressman Lloyd Meeds. Specifically, I informed them that I am continuing my policies.

I informed them and others that I have been timely funding all grantees and backup centers. My decision to basically fund through March 31, 1976 met with their approval under all the circumstances. These funding policies enable the Legal Services Corporation board to make any decisions it may desire regarding grantees and also backup centers with deliberation (almost nine months).

By not favoring any one grantee or backup center at this time and by timely funding enables the board to make the tough decisions in an atmosphere of neutrality.

On other matters—dealing with general policies of administration, including personnel, these matters are solely for the board to act upon.

Again, I shall continue to formally or informally cooperate with you.

Sincerely,

BERT A. GALLEGOS,
Director.

ATTACHMENT B

LEGAL SERVICES CORP.,
Washington, D.C., September 5, 1975.

[Memorandum]

To: The Board of Directors.

From: Louis F. Oberdorfer.

Subject: Forward-Funding of Back-Up Centers.

In its August 4-5 meeting, the Board of Directors passed the following resolution:

Resolved, That the transition staff, including the OMB Management Team, in conjunction with interested parties, study and report to the Board prior to October 1, 1975, a recommendation as to the position the Corporation should take with respect to the decision announced by the Community Services Administration letter of July 23, 1975, to the Chairman of the Board to fund all grantees and backup centers through March 31, 1976. The recommendation should discuss the alternatives available to the Board in implementing Section 1006(a) (3) of the Act if it becomes necessary to do so on or before March 31, 1976.

In accordance with that resolution, the transition staff has undertaken the following studies and activities since the last meeting:

1. We asked Carl Eardley, the former Deputy Assistant Attorney General in charge of the Civil Division and now partner in the Washington firm of Ruckelshaus, Beveridge, Fairbanks and Diamond; James Robertson, the former director of the Lawyers' Committee for Civil Rights Under Law and currently a partner in the firm of Wilmer, Cutler and Pickering; and Kent Morrison, a former legal services attorney and Assistant Director of the Office of Legal Services and currently with the Washington firm of Jones, Daye, Reavis and Pogue, to undertake a general analysis (based on their experience and observations) of the role of specialized legal services in a large-scale law enterprise such as the legal services program. Their report, which is included behind Tab 11, concludes that specialized legal services are indispensable to an enterprise like the legal services program:

2. We asked Constance Dupre, the former Director of the Division of Research and Development of OLS, to prepare a paper summarizing how the Office of Legal Services has evaluated and monitored the activities of back-up centers since their organization in the late 1960's. Her report is also contained behind Tab 12;

3. Hogan and Hartson, the Corporation's temporary outside counsel, prepared a legal memorandum discussing, among other things, the applicability of Section 1006(a) (3) of the Act to obligations the Corporation will assume from the Community Services Administration pursuant to section 3 of the Act. That memorandum, which is contained behind Tab 13, concludes that the Corporation is authorized to provide specialized legal assistance:

A. Legal assistance for eligible clients or specialized support service in connection with such assistance must be furnished by a recipient and not by the Corporation itself.

B. Research, clearinghouse service, training and technical assistance to recipients disassociated from legal assistance to clients must be provided by the Corporation.

It may be necessary, as existing grants and contracts expire, to rearrange over time the legal and functional relationships between the Corporation and its recipients. As you know, those grants and contracts will now expire March 31, 1976. If the Corporation is not able to decide upon the future of the Centers by that time, the memorandum advises that either CSA could be asked now to forward-fund the Centers beyond that date, or the Corporation could exercise one or more of several options available to it to maintain Center functions for a sufficient time beyond March 31 to ensure an orderly transition—a responsibility that CSA shares with the Corporation.

4. We asked Rita Geier, the former Director of the Seattle, Washington, Legal Services Program, to prepare an outline of an in-depth evaluation of all existing back-up centers. Her report, which was prepared with the assistance of Arnold Miller, a member of a management consulting firm which specializes in evaluations, and Richard Carter of the transition staff, is included behind Tab 14.

Based on all of the foregoing, the transition staff recommends that the Board of Directors ask the Director of the Community Services Administration to forward-fund the back-up centers through June 30, 1976. We believe that these additional three months are necessary to insure that the Corporation will have sufficient time to evaluate the back-up centers and make the program and structural changes required by Section 1006(a)(3) without causing serious disruption to essential back-up services.

Specifically, the Corporation's decision-making process with respect to back-up centers should proceed through two stages, namely, evaluation, decision-making and action:

A. *Evaluation.* Before the Corporation can make any judgment with respect to the continuation of back-up services, it is necessary to undertake an in-depth evaluation of the quality of the services currently being provided. This evaluation must discover, analyze and describe those activities which are directly related to the provision of legal services to eligible clients and those which are not. To this end, the transition team has already requested reports of the litigation and other activities at each center. Most of these have already been supplied.

B. *Decision making and action.* There are a number of thought-provoking, time-consuming actions that will be required after the evaluation.

(1) A careful balance of management, personal and legal considerations will be required to determine which, if any, Centers should be relocated geographically and which can be continued by the Corporation as a branch at a location away from the Corporation's headquarters.

(2) Many of the Centers have been encouraged by OLS to obtain and have, in fact, obtained grants from funding sources other than the Federal Government. These make a valuable contribution to the total capability of the legal services program as a whole. Hasty, ill-prepared actions in restructuring and relocating Centers before each of the funding sources has been approached and satisfied could be costly.

(3) Some of the Centers have personnel and functions which are difficult to categorize as between those properly belonging to recipients and those properly belonging to the Corporation. The management judgment required to redistribute people and functions effectively, while quite feasible, can best be accomplished with care over time.

In this respect, the specific data which we have received from the Centers enumerating and describing pending litigation for which they have varying degrees of responsibility suggests that there is a professional duty which the Corporation must discharge to assure that pending matters are handled properly and that those which must, for some reason, be assigned to fresh counsel are so assigned in a manner that gives full consideration to the interests of the parties and the concern of the courts about the administration of justice.

(4) The evaluation process may reveal the need for substantive changes in current specialized services either in the form of elimination of some functions or additions of new functions. These will require time and extremely careful consideration.

For all these reasons, I submit that the important initial phase of the Corporation's life could be seriously complicated if it were stamped by artificial restraints into deciding and acting on this important matter precipitously. I am also satisfied that on the basis of my experience with the Corporation that it will be able to make the necessary decisions and to take the necessary action by June 30, 1976, to meet its responsibilities under the law.

LEGAL SERVICES CORP.,
Washington, D.C., September 7, 1975.

[Memorandum]

To: Louis F. Oberdorfer.

From: Carl Eardley, James Robertson, Kent Morrison.

Subject: Legal Services Corporation: Specialized Legal Services.

You have asked for our thoughts on the role of specialized legal services in the activities that will be funded by the Legal Services Corporation. Presumably, you have selected us for this task because we have all had experience, in varying degrees, with the direction and management of substantial litigation case loads. It is on the basis of that experience that we conclude that specialized legal services will be absolutely essential to the operation of the Legal Services Corporation; without them, we think, it is not likely that the Corporation can operate efficiently or effectively.

Some of the reasons for our conclusion seem almost self-evident. We begin with the observation that specialization is here to stay, in nearly any calling one can name. The legal profession may be the last bastion of the generalist, but even here it is only an unusually talented lawyer who can achieve a solid, successful practice without specialization. Indeed, if there is one thing the generalist must know, it is how to recognize when a client's problem calls for specialized knowledge or experience beyond his normal practice. All practitioners are aware of the benefits that are derived from practice in firms that divide their labor into such substantive areas as tax, corporate, anti-trust, real estate and probate. The benefits are increased competence, increased efficiency, and increased income. It is a truism that most practicing lawyers tend towards specialization almost automatically as they grow professionally.

Of course, we are not dealing with specialization in the abstract, but with the need of an institution like the Legal Services Corporation to organize itself so that specialization is acknowledged and built in. One might ask: Why, if lawyers just automatically tend to specialize themselves, is there a need to *institutionalize* specialized services? Expertise in private practice is sometimes accumulated, and dispensed, quite informally. Why can't a poverty lawyer in one program who becomes expert in, say, garnishment law, simply feed other lawyers his expertise? The answer to that question is not so obvious, perhaps. It lies in the special characteristics of larger organizations that provide legal services: the size and the nature of client case load, and the wide distribution, inexperience, and high turnover of lawyer personnel.

If the "line" programs funded by LSC do their jobs, they will be staffed by very busy lawyers. The broad scope of problems those lawyers will have to deal with will necessarily preclude their very detailed familiarity with the nuances or the latest developments in the law applicable to each problem. Even the "line" legal services lawyers who specialize to some degree will typically have a personal case load that makes impossible in-depth research or brief-writing or the overall responsibility for handling complicated cases.

The typical legal services practitioner, moreover, is not yet a seasoned lawyer; the average practice experience of legal services professionals is only about two years. That statistic reflects another fact of life for legal services: high personnel turnover.

It would be a mistake and a disservice to the clients depending upon legal services programs to reduce individual case loads to the extent necessary to develop full scale expertise in individual attorneys in all or most "line" programs in the various areas of the law of concern to legal services clients. This is especially true since experience to date shows that the many young poverty lawyers who would thus become experts will move on to another kind of practice in two years.

Finally, deep expertise is most unlikely to develop informally in an institution with attorneys scattered throughout the United States: it simply could not possibly develop if all such attorneys were busy "line" attorneys. Even assuming that the expertise and the time for making it available did develop informally, the effective knowledge of its availability among "line" attorneys would be most unlikely. Moreover, the relatively high rate of turnover among "line" attorneys would further diminish the effective knowledge of such informally developed specialized knowledge and expertise.

Considerations like these—heavy case load, small scattered units with front-line responsibility, inexperience and turnover—have led every large legal organization we know of to organize a system of specialized services to support the front-line attorney. The Department of Justice provides a wide range of specialized legal services to the United States Attorneys throughout the country. Justice Department lawyers not only help United States Attorneys in a wide range of cases, but they try cases themselves on a referral basis. Departmental expertise ranges from the general civil trial and appellate skills of the Civil Division and the Solicitor General's Office to the specialized substantive areas of the Tax, Civil Rights, Antitrust, Lands and Criminal Divisions. For the same reasons, federal agencies with substantial legal problems have found it necessary to subdivide their offices of general counsel into areas related to the substantive activities of the agency. Of particular note are the Departments of Labor and Health, Education and Welfare, as well as the NLRB, the FCC and other regulatory agencies which have highly subdivided and specialized offices of legal counsel.

The private sector does not typically encounter such high per-lawyer case loads, or such personnel problems as inexperience and high turnover, but all organizations that must deal successfully with large numbers of cases turn eventually to specialized legal services as the only answer. Thus, major law firms, the law departments of large corporations are usually subdivided into specialties, and in-house corporate specialists assist and consult with lawyers in regional offices or subsidiaries, as well as with retained counsel working on the corporation's business.

Some of the 260 or more legal services programs now in operation are so large as to have fairly comprehensive localized specialization. For example, Baltimore. Others may have advanced specialization in, say, housing and employment, but lack of knowledge of welfare matters, health services or consumer matters. In any event, and especially in view of the uniquely federal nature of the entitlements of poor people, national centers of specialization are clearly needed, for *efficiency*, for *continuity*, and for *effective representation*.

Efficient provision of legal services is nothing more than optimum expenditure of tax dollars. If a national specialization center can provide a brief in point, carefully researched and recently checked out, it makes no sense to re-research the point. Even if two lawyers start from scratch, the one with specialized experience in the field involved will reach the correct result faster and more economically than will the "generalist."

The continuity provided by a comprehensive, organized, national system of specialized legal services will enhance the institution's ability to attract the best legal minds, and, by increasing the potential for professional excellence, will go a long way toward overcoming the problem of personnel turnover. In addition, specialized units in substantive areas of the law will provide the attorneys employed by programs funded by the Corporation with a recognized and respected friend, particularly in appellate proceedings. It will also give the Corporation the in-house capability to recognize and evaluate trends in the substantive law from time to time, thus enabling the more intelligent setting of priorities.

LSC representation will be more effective with specialized legal services. More clients will get higher quality services more cheaply. And specialists will know when *not* to bring suit; an LSC with institutionalized specialization is less likely to "re-invent the wheel" over and over again in its front-line offices.

The Corporation's decision to develop and utilize specialized legal resources is only a first step, of course. Once that decision has been made, a number of issues will arise concerning how best to develop and place these services.

First, the Corporation will have to consider the kinds of services it may be called upon to perform for its clients, and then determine whether the presently recognized substantive areas for specialization are the right ones.¹ Do present funding levels coincide with the Corporation's priorities, and are the current "backup centers" well located?

Second, the Corporation will need to address and adjust the right working relationship between its specialized centers—which are "staff"—and the line attorneys of the field programs. Questions of control and accountability will be extremely important, and they will be sensitive.

¹ Substantive areas: housing, employment, health, welfare, consumer affairs, education—and client groupings: youth, the elderly, Indians and migrants.

Finally, as for all other legal services provided by the Corporation, there will have to be procedures and techniques for evaluation of the specialized legal services. In particular, the question whether and to what extent particular specialized legal services are effective, in comparison to other legal services the Corporation might be in a position to provide, is one for constant reassessment.

One reason that the questions of control and accountability will be sensitive, we understand, is that charges have been brought that the issues pursued by the present centers have created controversy. Evidently some of the controversy revolves around allegations that issues are chosen as lawyers' issues or social scientists' issues, not client issues. A second concern is the extent to which cases are filed directly by a center or an amicus brief is filed without coordination with the lawyers and their clients in the field. We understand that many of these allegations are false, but we urge sufficient study to develop on-going methods of monitoring and evaluation in order to eliminate any misapprehension among the Bar and among clients. We also understand that there is a history within the Office of Legal Services of attempts to insure against these sensitive problems through evaluation and grant-monitoring devices. We make no judgment now about that, but it should also be examined carefully and appropriate changes, if necessary, should be made by the staff.

Our recommendation to the Corporation is that it concludes in favor of specialized legal services. They will make the program more efficient and more effective. Frankly, it is hard for us to imagine any other result.

[Memorandum]

SEPTEMBER 7, 1975.

To: Louis F. Oberdorfer.

From: Constance Dupre.

Subject: The funding and monitoring of the present back-up centers.

The Legal Services national resource centers ("backup centers") were funded by Legal Services national headquarters to answer a critical need. The problems of poor persons range through every major area of the law. Since the caseloads of Legal Services field attorneys were (and still are) far greater than the caseload of the average private attorney, they could not hope, without specialization, to give adequate service to their clients. Most field programs, however, did not have the resources to provide specialists in even a few areas. This combination of inadequate resources plus unusually high client demand resulted in an urgent need for readily accessible, specialized advice from a source outside of the individual field programs.

The concept of providing specialized outside legal assistance to the field attorney was not, of course, one new to the legal profession. Private law firms, which can afford to employ their own specialists, also make use of consultant help to assist in instances where there is a need for specialized advice or where their caseload warrants such assistance.

Early decisions. Appropriately, the first resource center founded was in the area of welfare law, one particularly applicable to the needs of poor clients and one about which there was little knowledge within the legal profession (since clients with welfare problems by definition had rarely been able to retain attorneys). Next was the center in housing law, another area wherein the particular problems of poor persons had been little studied or represented by attorneys. New centers were gradually established in response to the expressed needs of field attorneys in handling client problems.

The national office closely followed developments in the field offices to determine the need for new centers and what should be their relative sizes. For instance, the employment center was originally merely a small unit attached to the welfare center. Headquarters later determined that the needs of field attorneys merited a separate, expanded employment center. Through deliberate funding choices, the employment center was gradually expanded; this was made possible by funding several other, larger centers in place.

Individual Assistance. Although field attorneys required basic legal reference materials, their greatest need was always individualized assistance in handling specific cases. This situation arose not only from the wide variety of substantive issues to be settled or litigated, but also from the fact that the average Legal Services attorney, because of the low salaries offered, was young and relatively inexperienced. The great number of field attorneys were hired directly from law school and had little or no knowledge of basic litigation procedures or strategy.

They required concrete help, from the stage of determining whether settlement or litigation was advisable in a particular case, through the completion of appellate proceedings. For such assistance, they turned to the resource centers.

The national office continually monitored the activities and accomplishments of the resource centers to assure that this central purpose was adequately fulfilled. For historical funding reasons (some of the centers had been originally funded by OEO offices other than Legal Services), the staffs of several centers had been chosen for capabilities in basic legal research, including legislative research, rather than as experienced trial attorneys. Through a variety of means which will be discussed below, the national office effected changes in these centers so that they became effective and responsive in their primary area of responsibility: *answering requests from field attorneys for concrete assistance on specific client problems.*

Monitoring Methods. There were a number of methods used by headquarters to ensure that the centers were accountable to the field and its needs. (1) The program officer routinely received communications from field attorneys on their experiences with the centers, and contacted the centers in reference to any problems. (2) The centers were encouraged to send questionnaires, etc., to the field offices to survey their requirements. (3) All of the centers had to discuss and justify their goals and priorities in their funding and refunding applications. (4) They were then required to submit quarterly reports to headquarters, demonstrating how they were meeting those goals and priorities and attaching a breakdown of the number and types of requests for assistance which they had received and in what way they had responded to those requests (orally, letter, briefs, etc.). (5) The centers were required to set up advisory or governing boards which contained a certain number of field attorneys and client representatives. (6) Headquarters reviewed all center publications to assure that they were consistent with the primary purposes of the grants.

Evaluation. A major means of monitoring center accountability and providing information for funding decisions and "special conditions" attached to center grants was the use of the yearly evaluation. The program officer chose a team of evaluators, having particular expertise in the center's area of law, to conduct an evaluation ranging from two to five days in length. On these teams were Legal Services field attorneys, generally at least one member of the private bar, a client representative, and often a non-attorney professional in the substantive area covered by the center. The team members were provided in advance with the center's refunding proposal and current grant, materials pertaining to the center's operation, and sometimes samples of the center's work product. The center in addition had its records and work product ready for inspection. The team members were provided with lists of field programs to contact by phone or letter, including programs with which the center had worked and programs with which the center had not worked (in the case of the latter, the team members inquired into the reasons why there had not been contacts with the center); in addition, they contacted field programs chosen at random. The results of these contacts were an integral part of the evaluation report. Whenever possible, all center staff members were interviewed by at least one team member.

The program officer, in addition to asking for a basic report covering all areas of the center's operation, would also often direct the team members to investigate with particular care one or more special aspects of the center's effectiveness, including the abilities or use of certain personnel. These requests were made to assist in resolving any present or anticipated problems of center responsiveness to field needs.

At the conclusion of the evaluation visit, each of the team members wrote up his or her individual report, and recommendations on funding decisions or programmatic changes. The team captain would then write a composite report based on the individual reports. Both the composite and individual reports were submitted to headquarters. The centers were given copies of the composite reports.

Headquarters used these evaluation reports, and the other monitoring methods discussed above, to make its refunding decisions and to insert "special conditions" on refundings. If appropriate, headquarters would increase or decrease funding level or a line-item funding level. (For instance, if a litigator of a certain level of experience was needed, a slot with a particular salary level necessary to obtain such a person was written into the grant; if increased litigation travel costs were needed, travel allotment for that particular purpose was increased.) In addition, "special conditions" were written to effect necessary changes. (For example, one center was required to allot at least a certain specified percentage

of its staff to full-time litigation activities; two other centers were proscribed from servicing particular types of requests in order to avoid unnecessary overlapping of functions.) The refunding requests of the centers, upon which the grants were based, had to outline goals and priorities consistent with those approved by headquarters (and communicated to the centers) on the basis of the various types of information which had been made available to it.

Conclusion. By all of the above means, the national office closely monitored the growth and activities of each center, made decisions as to priorities based on field needs, and assured, as much as was possible, that the centers continued to fill the central requirement of field programs for concrete, specialized assistance in handling cases both at the pre-litigation and litigation stages.

[Memorandum]

To: Louis F. Oberdorfer.

From: Rita S. Geier, Arnold J. Miller, and members of the transition team.

Re Evaluation of support centers.

I. INTRODUCTION

This memorandum briefly describes the purposes and methodology for an evaluation of the national support centers funded by the Community Services Administration, through the Office of Legal Services. The sixteen centers presently provide a range of specialized support to local legal services projects. The activities of the centers include:

Assistance in substantive areas of law and with advocacy in general, including litigation as counsel or co-counsel, assistance on briefs, and the preparation of legal memoranda.

Training of attorneys, paralegals and project directors.

Maintaining a flow of information regarding relevant judicial, legislative and administrative developments.

Providing technical assistance to local projects in program management and planning.

The Corporation must decide *the extent to which* these activities should continue and, if so, *how* they should be carried out in the new legal services environment and law.

II. PURPOSES OF THE EVALUATION

In order to assist the Corporation with this decision, we propose an evaluation of the support centers. The evaluation should address the following issues:

1. *How well* have the centers been *performing according to* the objectives of their *present work plans*?
2. What *types of support will be needed* by local projects in the future?
3. *Who* should provide that support and *how* should it be provided?

Thus, the evaluation will have a user orientation. It will focus on those needs of local projects and their clients that they are unable to provide with their own resources in a cost effective manner.

In order to accomplish these purposes, the evaluation should seek out information and opinion from both the *providers* and the *users* (actual and potential) of legal services support and those in the Bar and on the Bench who have observed center work. The following section describes the manner in which an evaluation could be conducted so as to be completed within four to ten months, depending upon the number of staff and consultants available.

III. METHODOLOGY FOR THE EVALUATION

The schedule of tasks, attached, assumes a five-month evaluation. This section describes those tasks.

Task 1. Staff Selection.

The personnel to perform the evaluation should include both full-time staff and consultants. They should have

Expertise in those substantive areas with which the centers are concerned.

Experience in the operation and needs of a local legal services program.

Familiarity with the problems of specialized litigation outside the legal services community.

Task 2. Preliminary Design.

The preliminary design of the evaluation should be based on the following factors:

- (A) *The quality of the work products developed by the centers;*
- (B) *The effectiveness of the centers' dissemination systems;*
- (C) *The responsiveness of the work programs, goals and priorities to the needs of projects and clients; and*
- (D) *The management of resources.*

These factors are further discussed below under Task 4.

Task 3. Document Reviews and Summarization.

In order to prepare for an informal evaluation of the centers' activities and the needs of local projects, a number of relevant documents must be reviewed and summarized. Each center will be asked to provide the kind of background information which, together with existing OLS data (annual reports, previous evaluations and audits), will permit the evaluators to acquire in-depth and specific knowledge of the center's operations. The information submitted should include the following:

- (A) Statement of the center's purpose, goals and priorities;
- (B) The trial and appellate briefs and transcripts of depositions from cases in which the center has been involved;
- (C) Specific needs of the local projects which the center is designed to meet;
- (D) Types of support services provided;
- (E) Description of the delivery system;
- (F) Service data for the most recent three-year period;
- (G) Brief resume of professional staff members;
- (H) Statement of the center's major strengths and weaknesses;
- (I) Names and addresses of legal services projects directly assisted within the most recent 12-month period.

The evaluation staff will receive and analyze the reports and summarize the preliminary information in a profile of each center.

Task 4. Design of Evaluation Instruments.

Since the activities of the centers and the needs of local projects are different, evaluation instruments should be site-specific. The instruments for the centers will be designed to ascertain:

A. *The quality and quantity of the center's work.* The staff for the evaluation team will be composed of people with expertise in those substantive areas with which the centers are concerned. The evaluation instruments which the staff develops will be able to reveal the competence of center staff in the area of service.

This should include expertise in the legal work, in direct litigation or appeals as as memoranda or other materials.

B. *The effectiveness of the centers' dissemination systems.* Good work is not enough. It must be readily available for use in the field. The evaluation instruments will address the techniques employed by each center for dissemination. What is the procedure for getting assistance from the center and how efficiently and quickly is the service provided? On what criteria are requests for assistance accepted or rejected by the center? What are the operative working relationships between projects and the center in the delivery of services? To what extent are projects aware of the kinds of services available from the center?

C. *The responsiveness of the work programs to the needs of legal services projects and clients.* The staff of the evaluation team will also be composed of people with experience in the operation and needs of local programs. They will develop portions of the instruments which will help to reveal the center staff's understanding of the needs of attorneys in the field.

D. *The management of resources.* The evaluation instruments will be designed to ascertain how each center organizes its staff to maximize quality control, productivity and efficiency of operation. How is it decided who performs what work within each center? To whom is the center accountable for its activities? What is the role and composition of each centers' policy-making and advisory body? What is the relationship of each center to its sponsoring organization or institution? Over the years, through special conditions, OLS has redirected the scope of activities of some of the centers. The evaluation instruments developed should attempt to measure the responsiveness of the centers to these efforts at redirection.

The instruments for use at local legal services projects should be designed to ascertain how local projects define their needs for specialized support, what those needs are and how they feel that support should be provided. How relevant has the work of the support centers been to the specific needs of local projects? How can they be made more relevant?

Task 5. Field Test of Evaluation Instruments.

In order to make certain that the instruments developed are valid for the purposes of the evaluation and the availability of data in the field, they should first be tested at two support centers and three local projects.

Task 6. Instrument Redesign.

Based on the field tests, the instruments for each site should be refined. This should be a rapid process.

Task 7. Training of Evaluation Field Staff.

Prior to the site visits, the evaluation staff should receive a detailed orientation regarding the purposes of the evaluation, the use of the evaluation instruments and the activities of the centers as reflected in the document summaries described above under Task 3.

Task 8. Site Visits.

Evaluation teams should visit both the support centers and local projects. All sixteen support centers should be visited. The sample of local projects which are visited should include:

Members of the Bar and Bench who have observed the work of center personnel.

Frequent users of support centers.

Occasional users.

Projects which rarely use the services of support centers. The sample should also include projects which are urban (large and small), rural and those which serve special client groups.

Task 9. Analysis.

The analysis of the document reviews and site visits should be developed by the staff evaluators on a center-by-center basis. Information about needs, gathered from local projects, should be arranged according to the categories of local projects described above.

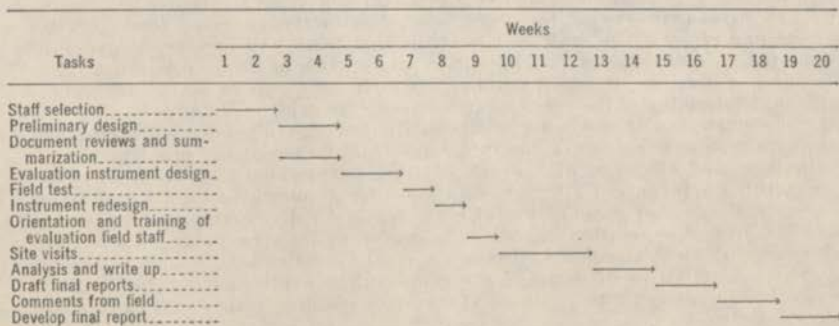
Task 10. Draft Final Report.

The evaluation report should include an assessment of the activities of each center and recommendations about its future role as well as an overall discussion of the ways in which the Corporation should organize for the provision of the various types of support services.

Task 11. Comments from the Field.

After the draft reports are developed they should be circulated to the field for comment. In the event that discrepancies between the judgments of evaluators and comments from the field cannot be resolved, the comments from the field should be appended to the final report.

Task 12. Final Report.



ATTACHMENT C

LEGAL SERVICES CORP.,

Washington, D.C., September 11, 1975.

Mr. BERT GALLEGOS,

Director, Community Services Administration, Washington, D.C.

DEAR MR. GALLEGOS: As you know, the Board of Directors of the Legal Services Corporation including its staff have given a great deal of thought to your letter of July 23, 1975, advising us of your decision to fund all Legal Services programs and back-up centers through March 31, 1976. Specifically, since we did not have sufficient information at the time we received your letter, at our August 4-5 Board meeting, we instructed the staff to determine whether it would be possible for the Corporation to resolve the highly complex factual and legal issues with respect to the continuation of specialized legal services in time to make new funding decisions by March 31, 1976.

Pursuant to that mandate, the transition staff undertook several major studies and reported to the Board at its September 9 meeting that it would be difficult, if not impossible, for the Corporation to gather the information and make the analysis necessary to reach and implement considered judgment with respect to these matters by March 31, 1976, but that three additional months (i.e., until June 30, 1976), would give the staff sufficient time to evaluate the back-up centers and for the Corporation to make the program and structural changes required by Section 1006(a) (3) of the Legal Services Corporation Act without causing serious disruption to essential back-up services. Specifically, the staff recommended that the Corporation decision-making process proceed through the following two stages:

A. *Evaluation.* Before the Corporation can make any judgment with respect to the continuation of back-up services, it is necessary to undertake an in-depth evaluation of the quality of the services currently being provided. This evaluation must discover, analyze and describe those activities which are directly related to the provision of legal services to eligible clients and those which are not. To this end, the staff has already requested reports to the litigation and other activities at each center. Most of these have already been supplied.

B. *Decision-Making and Action.* There are a number of thought-provoking, time-consuming actions that will be required after the evaluation:

(1) A careful balance of management, personal and legal considerations will be required to determine which, if any, Centers should be relocated geographically and which can be continued by the Corporation as a branch at a location away from the Corporation's headquarters.

(2) Many of the Centers have been encouraged to obtain and have, in fact, obtained grants from funding sources other than the Federal Government. These make a valuable contribution to the total capability of the legal services program as a whole. Hastily, ill-prepared actions in restructuring and relocating Centers before each of the funding sources has been approached and satisfied could be costly.

(3) Some of the Centers have personnel and functions which are difficult to categorize as between those properly belonging to recipients and those properly belonging to the Corporation. The management judgment required to redistribute people and functions effectively, while quite feasible, can best be accomplished with care over time. In this respect, the specific data which we have received from the Centers enumerating and describing pending litigation for which they have varying degrees of responsibility suggests that there is a professional duty which the Corporation must discharge to assure that pending matters are handled properly and that those which must, for some reason, be assigned to fresh counsel are so assigned in a manner that gives full consideration to the interests of the parties and the concern of the courts about the administration of justice.

(4) The evaluation process may reveal the need for substantive changes in current specialized services either in the form of elimination of some functions or additions of new functions. These will require time and extremely careful consideration.

Based on this staff report, the Board adopted the following resolution:

Whereas, it is impossible to determine with confidence whether the Corporation can complete in time for Board action and implementation by March 31, 1976, the studies and consideration necessary to decide about possible alternatives for implementing Section 1006(a) (3) of the Legal Services Corporation Act (Pub. L. 93-355), but believes it can do so by June 30, 1976,

Resolved, That the Board of Directors hereby authorize the Chairman (1) to inform the Director of the Community Services Administration of this conclusion and (2) to take the steps necessary to complete the requisite studies and consideration as rapidly as possible and (3) to make appropriate lawful plans to continue those relevant programs in operation until those studies and considerations are available for a decision by the Board, and (4) to report to the Board at each meeting concerning progress in this area.

Accordingly, we sincerely hope that you will take the foregoing information and resolution into account in reconsidering your decision to forward-fund the back-up centers through March 31, 1976. We are making this request pursuant to Section 3(d) of the Act and on the basis of our considered judgment that the Corporation would be in a better position to make a rational decision with respect to its obligations under Section 1006(a) (3) if it does not have to make funding decisions with respect to back-up centers until June 30, 1976.

Sincerely,

ROGER C. CRAMTON, *Chairman*.

Mr. KASTENMEIER. Next, the Chair would like to call Gregory R. Dallaire, chairman of the Project Advisory Group.

TESTIMONY OF GREGORY R. DALLAIRE, ESQ., CHAIRMAN, PROJECT ADVISORY GROUP, AND DIRECTOR, SEATTLE-KING COUNTY LEGAL SERVICES

Mr. DALLAIRE. Thank you, Mr. Chairman and members of the subcommittee. I hope to keep my remarks brief, and I would appreciate it if the statement that is already prepared would go into the record.

Mr. KASTENMEIER. Without objection, it will be received and made a part of the record.

Mr. DALLAIRE. My name is Gregory Dallaire. Since 1967, I have been a legal services lawyer. Prior to that time, I was in private practice. I have been involved in legal services work as a staff lawyer, as a deputy director, and as a director in legal services programs in California, Georgia, and Washington. Presently I am the director of the Legal Services Center in Seattle, Wash. I am also the chairperson of the Project Advisory Group.

The project advisory group was set up in 1967 at the instance of the Office of Legal Services of the Office of Economic Opportunity. The reason for creating PAG was to provide input of the field programs to the national office. As I understand, there are 260 some legal services programs in the country. We are not employees of the Office of Economic Opportunity, but we are separate nonprofit corporations. It was the wishes of the national office to have our input.

Since 1967, PAG has grown and flourished. Now we have a 40-person steering committee composed of large and small programs, composed of staff and project directors. All of these people are elected. There are four from each Federal region.

H.R. 7005 is before you today. You have heard testimony already in terms of what it is designed to do. Because this issue is so important to us, and it is important to the clients that we represent, the PAG has authorized me to respond to your request for testimony.

We support this legislation. No other issue is more important to us.

I would like to digress for just a minute off the statement because I think, Mr. Chairman and the other members of the subcommittee, that you hit the nail on the head in terms of addressing this particular issue. The issue is theory versus reality. That is really what it boils down to.

In theory, there is no reason that Congress can't pass this legislation if it is introduced the 15th of March, in theory, but as a practical reality, we all know and I know as a practicing lawyer, that you can't do that. That is the reality of it.

In theory, you can separate research, training and technical assistance functions. You can do that in theory and you heard Dean Cramton talk about the theory, and you heard him talk about the theory in terms of being able to come to Congress in March, but in practice there is no such thing as generalized specialization or generalized research. You can't divide those two functions.

In theory, the corporation is approaching this matter the correct way. They are not taking a position at all. Now, maybe that is correct in theory, but I don't think that is a right approach to come before this committee. In theory, the corporation is going to be able to hire all of the specialists when the backup centers go out of business, but in the practical realities of the matter, that just isn't going to occur, and I suggest to you if you were lawyers working in the backup centers, that you would be wondering whether or not you should go to work for the corporation also, particularly in terms of the way that the corporation is approaching this matter.

They are not even asking you for an option. They are taking no position whatsoever.

I want to give you some specific examples or some reasons why this legislation is right and why we need specialization. In private practice, even in California, they are starting to certify specialists. Private practitioners have had specialization for a long time and in the public sector the Justice Department has the same sort of thing. HEW has special counsels. Now our legal system is based upon the adversary process.

If we have a problem with HEW and they have their specialized attorneys, aren't our clients entitled to the same sort of thing? That is what our whole legal system is about.

It is impossible for legal services programs to monitor agencies and keep abreast of the general developments of the law, and it is impossible to alert field programs when you don't have the support centers in the first place. And we really have to have that litigation function available to us when it is appropriate.

Now, in Seattle we have a large program, but even then our attorneys cannot spend time focusing on these particular functions that I talked about. We have 41 attorneys. We have eleven offices. We have specialized offices that represent institutionalized patients, prisoners, Indians on reservations, and we have specialized units dealing with consumer law, housing, and so forth and so on. Yet, we need the support of those centers just as other programs across the country need them.

The suit against the Agriculture Department that is outlined in the statement is a very good example. In 1971, I had a lawyer come in to me and want to have 3 to 4 weeks off to prepare a case. He had approximately 85 cases, clients, that he was representing. These were anything from contested divorces to public assistance fair hearings. The unemployment rate in Seattle at that time was incredible. The demand for our services was at that time incredible. In 1969, we served 2,400 clients. In 1971, we served 15,000. Everybody knew what the prob-

lem was in Seattle in terms of the unemployment rate. The problem was that our clients could not afford to purchase food stamps and Agriculture had a policy that would not allow for a food commodity distribution program to be set up in the same political jurisdiction where you had a food stamp program operating. It was so bad that Seattle's sister city in Japan sent over a boatload of rice to help feed people.

That attorney still had those 85 cases and those clients he had to represent, however. I called the Center on Social Welfare Policy and Law and we set up—connected up with a lawyer there to work with our lawyer and the first thing we did was the responsible thing. We tried to negotiate this matter with Agriculture and when negotiations proved fruitless we filed suit. That lawyer did not take those 3 months off. That lawyer continued to represent his clients, but he worked with the other lawyer and the two lawyers together handled that particular case just before Christmas, we won that case. And it was found that essentially Agriculture was arbitrary and capricious in establishing this regulation, and furthermore, it was in violation of the intent of Congress, and that points out something I don't think was made strong enough by the other people. Much of the work we do is law enforcement related. We are the civil law enforcers for poor people. When Congress passes acts, if you don't have the adversary system that is going to test these and make sure that our clients are getting what they are entitled to from the actions of Congress, then they are not going to get them.

Going on with other examples, we had a title I suit where there was a misuse of special title I education program funds in a school district. We had to call upon the Center for Law and Education. We knew there was a problem, but we didn't know quite how to get at it, and the problem was that they were taking those funds and using them for wrestling equipment, band uniforms, and so forth and so on, when those funds were supposed to be used to supplement the special needs of Spanish-speaking children in this particular school district.

How could we define the problem and prove that they were supplanting rather than supplementing? We called upon the Center for Law and Education. They assisted us in our discovery and we settled that case the day before it went to trial to the satisfaction of our clients. They gave us everything.

During the past 5 years, we have worked with the Employment Law Center on pregnancy disqualification matters in unemployment compensation, racial discrimination in union apprenticeship programs. We have worked with the Native American Rights Fund and the Economic Development Backup Center regarding Indian fishing rights and even after the Indian fishing rights case was decided, we are having approximately two hearings a month on the implementation of that decision in the State of Washington. In addition to that, we are working with the economic development project to try and help those tribes to become self-sustaining through agricultural projects and the like.

We have worked with the senior citizens project concerning nursing home problems and SSI problems. The housing law project worked with us. We brought the law suit back in 1972 concerning the FHA 235 program, where FHA was not certifying houses up to code stand-

ards, and after we brought the case, Congress investigated and made some changes in the implementation of that legislation by FHA.

I could go on and on with examples of just what has gone on in Seattle, and Seattle is not an unusual program. The backup centers are just as important to a program in Upper Michigan, or to a program in rural Colorado or rural Georgia. I administered the program in Georgia which was basically a rural program. We had 154 counties to which we had to provide services. We had to call upon backup centers all the time to give us assistance.

Now, that is why it is necessary.

Mr. KASTENMEIER. I am sorry, Mr. Dallaire. There is a vote on and it is already the second bell, so I am going to have to interrupt your rather lengthy presentation. We will reconvene in 10 minutes to hear the conclusion and to hear our last witness. So until 12:30 the subcommittee will stand in recess.

Mr. DALLAIRE. Thank you, Mr. Chairman.

[A brief recess was taken.]

Mr. KASTENMEIER. The committee will come to order.

When the committee recessed, we were hearing from Mr. Gregory Dallaire. You may continue your statement.

Mr. DALLAIRE. Thank you, Mr. Chairman. I will try to keep my remarks brief and to the point.

I think that another matter that has been overlooked here is the other functions that the backup centers perform, specifically training, technical assistance and the clearinghouse function.

Now, on the subject of training, you have to get training from people who know what they are doing, who are the people who are in the field who are actually doing the practicing, and you have to have training from the specialists. In a bar association, you go to a continuing legal education course after you look and see who the speakers are, and you determine whether or not those are practicing lawyers who know what they are doing, who have the respect in the field, and when they have the experience and the expertise and the general knowledge that you want to get, then you go to that session.

The same thing is true with legal services, and it also follows in terms of paralegal training.

I would like, if I can, to submit a statement prepared by the Paralegal Institute regarding the training aspect as it affects paralegals under the act right now.

Mr. KASTENMEIER. Without objection, that statement will be received and made part of the record.

[The document referred to follows:]

TRAINING OF LEGAL SERVICES PERSONNEL UNDER THE LEGAL SERVICES CORPORATION ACT

(Prepared by the National Paralegal Institute)

Introduction

Since the inception of the Legal Services program in 1965, training has taken an increasingly important place in efforts to achieve effective delivery of legal services to the poor. As demands for training from the field accumulated, OEO (and then CSA) established a network of training activities and continued to experiment with new forms of training.

The legal problems of the poor are seldom taught in law schools or elsewhere in the education system. Effective representation of poor clients demands not only a knowledge of consumer, landlord-tenant, Supplemental Security Income, Social

Security Disability, AFDC, and similar poverty law subjects, but a set of skills peculiar to Legal Services work. A strength of the national Legal Services program has been its ability to attract energetic, young attorneys and other staff. One basis for this attraction is that, unlike the private practice of law, Legal Services projects do not insulate attorneys from direct client responsibility. If the poor are to be effectively served, these attorneys must be trained in the skills of case handling, court procedures, federal rules and office administration, as well as the substantive law areas.

The use of paraprofessionals as a supplement to attorneys has expanded to the point where there are now approximately 1,200 paralegals working with 2,000 Legal Services attorneys. While paralegals do not practice law, their functions are in many respects similar to attorneys. Apart from the CSA-funded training for paralegals described below, there is no entity in the country either preparing or delivering training in the skills and knowledge which CSA paralegals need.

In response to the constant demands from operating programs for training, CSA has established and supported a variety of training activities. The Legal Services Corporation is mandated under the Act to continue to provide training as a support function; however, restrictions are placed on continuing certain forms of training by grant or contract. Before considering how the Corporation can best meet its responsibilities, it is necessary to understand the present extent of training activities.

Summary of current training activities within CSA Legal Services

1. THE LEGAL SERVICES TRAINING PROGRAM AT CATHOLIC UNIVERSITY SCHOOL OF LAW

The Legal Services Training Program provides training to lawyers in case handling skills, project administration and management, and substantive law areas. Its programs are designed in accordance with expressed needs of Legal Services attorneys. It normally presents intensive training programs of three to six days duration at various training sites around the country. Using a small staff and relying heavily on Legal Services attorneys, private attorneys and law professors to design and present the training, it has offered courses to project directors in office administration, to beginning attorneys in case handling skills, to litigating attorneys in federal procedures, and courses on such subjects as consumer law, domestic relations and food law to interested field staff.

The Legal Services Training Program has also conducted programs to train trainers in the contents and methods of delivery of its packaged training programs. Subsequently, a number of training sessions around the country were successfully conducted by these trainers.

2. THE NATIONAL PARALEGAL INSTITUTE

The National Paralegal Institute (NPI), established in June, 1972, is a private non-profit corporation primarily engaged in the training and support of CSA Legal Services paralegals. It is the only organization whose sole purpose is to promote the training and utilization of paralegals in the public sector of the law. It is the only national resource available to Legal Services Projects that need information, training, training materials, technical assistance and support for the more than 1,200 paralegals now working in CSA programs.

Based on a study of project needs, NPI designed three intensive training programs—one for new paralegals, one for administrative advocacy specialists and one for those handling SSI and Social Security disability cases. These one-week programs, delivered regionally in retreat settings, emphasize the basic skills of interviewing, investigation, negotiation and fair hearing representation. All include courses on legal research, unauthorized practice of law, advocacy and professional responsibility and roles of paralegals. The programs also cover concepts of domestic relations, landlord-tenant, disability and welfare law.

In addition to training, the Institute conducts studies; promotes (and protects) the interests of Legal Services and other public sector paralegals with bar associations, colleges and law schools; prepares reports and position papers; and provides liaison on paralegal matters to national groups representing law schools, lawyers, the elderly, and others.

NPI also trains a limited number of trainers to do training and follow-up in both individual projects and in the regions. This is accomplished by including regional trainer-observers in all NPI delivered sessions as well as by a few separate sessions exclusively to train complete regional training teams.

Finally, a large quantity of training materials has been developed by NPI for its own use and for use in the field.

3. INFORMATIONAL TRAINING BY BACKUP AND SUPPORT CENTERS

Those national support centers which provide service in various subject areas of poverty law such as welfare, housing, employment, and health, conduct programs which supply substantive and technical information in their subject areas. These training conferences vary in duration and content, but generally run one or two days and provide information and guidance rather than the intensive skills training provided by the Lawyer Training program and the National Paralegal Institute.

4. LEGAL SERVICES PROJECT IN-HOUSE TRAINING FOR LAWYERS, PARALEGALS, AND OTHER STAFF

Many Legal Services programs conduct in-house training programs. This may be done utilizing materials produced by the two national training programs and/or using materials designed by project staff. In surveys on training needs, most projects have expressed the need for national training programs because of their inability to design and deliver substantial training programs. In addition, even where project staff can attend a national program's intensive session, the needs for on-going training are such that many projects regularly convene lawyers, paralegals, and other staff to discuss office procedures, skills, developments in substantive law, and specific subject areas such as local court rules and procedures and application of local laws.

5. CONSORTIA OF LEGAL SERVICES PROJECTS FOR TRAINING

In some areas projects pool their talent and energy to provide joint training programs. Thus, paralegals from a number of Southeastern Texas Legal Services programs were recently convened for a one-day training conference on administrative representation. Such statewide or regional consortia for training may be coordinated by statewide programs such as those in Michigan and Florida. These consortia programs often rely on technical assistance and materials from the national training staff.

6. TRAINING FUNDED BY NON-CSA SOURCES

In many states a statewide Legal Services project is financed by the state, federal agencies other than CSA, or foundations. One function of these programs is to provide supportive services and technical assistance to the CSA-funded Legal Services programs. In Florida, Pennsylvania, Connecticut, and Illinois, statewide programs regularly assemble paralegals, project directors and attorneys for information and training sessions. To the extent that these programs are funded outside of CSA, their activities will be unaffected by the Legal Services Corporation Act.

7. BOARD TRAINING BY THE NATIONAL CLIENT'S COUNCIL

CSA and the Corporation Act require that representative Boards of Directors have a major function in setting policy for Legal Services programs. Because these Boards have unusual functions and represent new coalitions of interest, it has been necessary to train the Boards in the exercise of their functions. For several years the National Client's Council has provided such training.

These above described forms of training have developed over years of experimentation. In each case appropriate materials, techniques and skilled personnel have been produced. In order to decide the future of training activities, the Corporation should take into account the entire range of training and the nature and qualification of the entities delivering it.

The Legal Services Corporation Act prohibition against training and the legislative interpretation

Section 1006(a) (3) reads:

In addition, the Corporation is authorized—(3) to undertake directly and not by grant or contract, the following activities relating to the delivery of legal assistance—

- A. Research
- B. Training and technical assistance, and
- C. To serve as a clearinghouse for information

The Conference Report attached to the Act asserts that these functions "are of utmost importance for the continuation of high quality legal services." The phrase "and not by grant or contract" was added on the floor at the last moment after the Conference Report was completed.

As Senator Nelson stated:

Since these functions are of extraordinary importance to Legal Services offices, there should be no disruption in the provision of these functions . . .

In consideration of this expressed need to continue the functions mentioned in Section 1006(a) (3), the OEO Office of Legal Services task force on the Corporation transition voted at its September 22-23, 1974, meeting to recommend to the Director of OEO that during the 90 day transition OEO should fund all program-support grantees for a one year period. This was to insure continuity of functions and to provide the Corporation a realistic time for study and consideration before determining how it should implement the Act.

As has been discussed elsewhere, there is substantial evidence in the legislative history of the Act that the purpose of Section 1006(a) (3) was to restrict the pursuit of "causes" and "social engineering" that some backup centers were believed to encourage. The legislative history reveals no intent to inhibit effective support of program service to bona fide clients.

In this context, the limitations on providing training by grant or contract would appear to be aimed at sealing off the possibility that national support projects would promote causes and social engineering in the guise of training. As stated by Senator Helms, [t] he purpose of this Amendment (adding 1006(a) (3)) is to see to it that funds available for legal aid to the poor are assigned to pay for legal representation and assistance, rather than for developing exotic social reform projects that are then passed down the line to the Legal Service projects.

In confirmation of the proposition that only certain kinds of support activities were to be forbidden by grant or contract, Congressman Quie stated, [t] he only grants or contracts which now can be made are those for the legal advice and representation to specific eligible clients—not general causes—having specific need of legal counsel, and not for any general legal research or information services.

Senator Cranston supports a similar interpretation by pointing to the language in Section 1006(a) (3) which limits support functions "relating to the delivery of legal assistance." He states:

Of course, the Corporation would not have this problem with regard to acquiring the necessary expertise in such management areas as project director training, board training, planning procedure, office supervision, office paper work control, ethical supervision, personnel practices and other assistance in techniques or management and administration because they are not concerned with the direct delivery of legal assistance by the litigating lawyers within the meaning and intent of Section 1006(a) (3). The Corporation can thus make new grants or contracts to continue these services in carrying out the purposes and provisions of the Act.

This suggests that the target of the restriction is the litigating attorney, and that a few members of Congress feared that training of litigating attorneys in substantive law areas was being conducted without regard to the specific concerns of the program clients and was a vehicle for communicating causes and social engineering. Thus, in accepting the last moment amendment, Congress apparently intended at most to limit training of attorneys by the subject-oriented backup centers which were believed by some to be fomenting litigation that did not arise from client requests.

Consonant with that amendment, the Corporation might by grant or contract, provide for training of lawyers in the skills of lawyering (such as negotiation, investigation, discovery, federal procedure, interviewing), of paralegals, and of

project staff and Boards in such areas as Board responsibility, office management, fiscal controls and caseload management.

Another section of the Act seems to point in this direction. While it is not a clear signpost, section 1007(b)(5) of the Act seems to contemplate a continuation of training by grant or contract, so long as such training does not espouse views of social change or foment social conflict. The section reads:

(b) No funds made available by the Corporation under this title, either by grant or contract, may be used

(5) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients; . . .

This seems clearly to imply that grants and contracts for lawyer and paralegal training are authorized, but does not suggest whether such training is to be done by individual projects or by national (or perhaps regional) training programs. The inefficiency of funding each project to design and plan its own training, either by hiring trainers or by using overburdened staff, leads to the conclusion that national training programs are what Congress had in mind.

Why the Corporation should not undertake all training functions itself

The foregoing interpretation of the Act permits the Corporation to continue funding by grant or contract a majority of the training activity described in the first section above. In order to insure continuity of certain support functions, however, it appears that the Corporation will of necessity undertake research, training and technical assistance in substantive areas of the law unassociated with specific clients' cases unless the Act is amended. Training in these areas has always been deemed important, since staff who specialize in such areas as Supplemental Security Income, food programs or AFDC among others, cannot perform effectively unless they have a current understanding of developments in the law.

The following are some suggested considerations for Congress and for the Corporation as to the Corporation's obligation to establish research, training and technical assistance capacities.

1. The history of the creation of the training and other support centers reflects the notion that each area of specialization, whether training, substantive law research, or technical assistance, could best be handled by a separate group of experts focusing on one mission. In some cases, accomplishment of this mission was enhanced by affiliation with a law school which provided resources in library, facilities, law students and faculty. Responsiveness to Legal Services and accountability to the projects and ultimately the clients being served was prompted by requiring representative Boards for the support and training centers. Each Board reflects the particular expertise of its center.

While it is arguable that some of the subject matter areas of the support centers are interrelated in certain respects (connections which come to mind are the National Senior Citizens Law Center and the Center on Social Welfare Policy and Law; the Lawyer Training Program and the National Paralegal Institute; the Juvenile Law and Education Law Centers), experience has shown that the divisions between centers are rational and that the separate entities are able to coordinate when necessary. The subject matter divisions tend to follow the specialization practices among attorneys generally. For the Corporation to preserve the value of separate responsibilities inherent in the current separation of subject matters, would require an extraordinarily complex administrative structure, particularly if the value of separate Boards knowledgeable in each subject area is to be preserved.

2. To the extent that the Corporation wishes to absorb the activities of operating support centers, the transition stage would be difficult. In executing such absorption, the Corporation might designate the employees of a support center as corporate employees, leaving them physically in place and relatively undisturbed, or it might physically transfer staff and responsibility into the corporation's offices. In either case, many employees of the support centers are unwilling to become Corporation employees. In the latter case, it is unlikely that even those staff of support programs who are willing to work for the Corporation will wish to relocate. Thus, the Corporation will need to create its own in-house staff before

accomplishing the transition. Some provision would then be necessary for an orderly transition of materials, records and know-how. It is difficult to imagine such a transition without substantial loss of momentum in the support programs.

3. The support and training centers were structured by OEO to serve the projects. This service notion is reflected in the general requirement that the centers primarily respond to project requests rather than generate activity on their own. The centers have had no authority to impose their will on the projects, but rather have existed to serve them. As rulemaker and funder for projects it will be inconsistent for the Corporation also to be the servant of the projects for training and support. Thus, total centralization of training and support services will defeat one original purpose of creating separate national centers.

4. With respect to training, two other difficulties arise should the Corporation wish to undertake training directly. The first difficulty is with evaluation. The training programs have been well served by the presence of independent CSA evaluators and project observers at their training sessions. This process enables the training programs to improve techniques and procedures and permits CSA to impose high standards of quality. To the extent that the Corporation undertakes training itself, it would be substantially disabled from independent evaluation and quality control. A decade of experience with OEO programs revealed the unworthiness of efforts at self-evaluation.

Second, in the training process it is desirable for the trainers and trainees to have freedom of comment including freedom to react to and openly discuss policies and practices of the Corporation and of their employers and other features of the Legal Services program. To illustrate, the Lawyer Training Program preferred to exclude the OEO Legal Services administrators from attending portions of the training sessions for project directors for fear that the OEO presence might inhibit free discussion. The National Paralegal Institute prefers to exclude any observers from its paralegal sessions dealing with the roles and functions of paralegals, since these sessions dwell particularly on the relations of paralegals to their employers. Other constraints can easily be imagined if the Corporation undertakes to train project employees in subjects which touch upon their status, functions, and relations to the employing organizations. Thus it is desirable to keep separate the training entity and the funding and decision-making entity.

5. Highly qualified staff have been attracted to the support and training centers partly because of the congeniality of small, specialized offices in which one could focus on a subject of interest in partnership with like-minded colleagues. To the extent that these conditions cannot be replicated in the Corporation, it may be difficult to attract the best staff.

6. Finally, OEO has profited in the past from experimentation in training techniques and content resulting from different training approaches. The national training programs have been intensely serious about improving their training capacities and have benefited from being separate from OEO and thus subject to open criticism from the projects. One virtue of an independent training entity is that its success and continuation depends on its ability to provide high quality training which the projects applaud. This dynamic of free criticism and flexibility to improve may be diminished if the Corporation itself offers training.

Conclusion

If the Legal Services Corporation Act is not amended, since paralegals are not entitled to practice law, and do not appear to be the target of the Section 1006(a) (3) prohibition against training which focuses on the "direct delivery of legal assistance by the litigating lawyers" (Senator Cranston), the National Paralegal Institute could continue to train paralegals in case-handing skills and in handling individual clients' cases in such areas as domestic relations, landlord-tenant, Supplemental Security Income and AFDC.

The National Client's Council could continue training board members. NLADA technical assistance grants could continue providing consultants for training and technical assistance in areas of management and administration. Individual projects could continue to train their own staff either separately or through consortia.

The Corporation might establish a unit for research, training and technical assistance, which would focus on substantive law developments and present training programs, materials and technical information to projects concerning substantive law developments. The unit would also provide information and guidance to attorneys on test case and law reform litigation.

Concomitant to this, the training and support centers would be prohibited from conducting training for attorneys in substantive law litigation. The subject matter support centers might then be permitted to provide technical assistance on cases involving a bona fide client, and the training centers would continue to provide training to lawyers and paralegals in skills, office management, administration and the handling of specific cases. Separating skills and substantive law training will be extremely awkward and difficult but apparently will be necessary under the Act.

Far preferable for all concerned would be for the Act to be amended to allow the Corporation itself to have the option of funding support activities by grant or contract or providing them directly. This would allow the Corporation the opportunity to reflect on the considerations outlined above and to arrive at a training strategy designed to serve program staff and clients in the best possible way.

Mr. DALLAIRE. Thank you very much.

To give you a practical example in terms of the management function, the four legal services programs in Washington State are now conducting some in-service training of attorneys. We learned how to train new and inexperienced lawyers by getting training for those trainers from the legal services training program located at Catholic University. Otherwise, we couldn't do that ourselves.

In addition, when you talk about the management of a law office and the peculiar problems that legal services programs are faced with, you have to have people who have been in the field, who are specialists and are familiar with what is going on, not somebody in a corporation back in the District of Columbia.

I think that I would like to conclude my remarks at this point and answer any questions that you might have rather than take up any more time.

Mr. KASTENMEIER. Thank you for your statement. I yield to the gentleman from Illinois.

Mr. RAILSBACK. No questions. Thank you very much.

Mr. DALLAIRE. Thank you.

Mr. KASTENMEIER. I have just one question. Do you think funds spent on national backup centers are more effective in providing legal services than the alternative of giving more money to local projects?

Mr. DALLAIRE. Oh, I think they should be spent on support services. There is no question about that. First of all, you are talking about the impact. You know, from the examples I gave you, if you spread that money out all over the United States, it is clear you are still going to have the problems that would exist if you didn't have backup centers. The important point in legal services and the reason that we were different from the old legal aid programs is that we have not cut corners on our representation and we emphasize quality, and I think that that is one of the reasons that backup centers have critics. It is because of the fact that we represent our clients well and they help us in doing it.

Mr. KASTENMEIER. Thank you, Mr. Dallaire. Congratulations on your work out on the west coast.

Mr. DALLAIRE. Thank you very much.

[The prepared statement of Gregory Dallaire follows:]

STATEMENT OF GREGORY DALLAIRE, CHAIRPERSON, PROJECT ADVISORY GROUP

Mr. Chairman and members of the subcommittee: My Name is Gregory Dallaire. I have been an attorney in legal services since 1967, after two years of

private practice. I have been both a staff attorney and project director in legal services programs in California, Georgia, and Washington State. I am presently Director of the Legal Services Center in Seattle, Washington. I am here today as Chairperson of the Project Advisory Group (PAG).

PAG was initially established in 1967 by the Office of Legal Services to provide input of field programs about the operation of the national legal services program. Since 1967 PAG has expanded both in function and size and is now the only organization within legal services which consists of all the field programs and which seeks to provide a voice for the legal services programs and staff in matters affecting legal services. The 40 person PAG steering committee now consists of four elected representatives from each of ten regions—some representing small projects and some chosen from project directors and some from the program staff.

Before this committee is HR 7005. This bill will restore to the Legal Services Corporation the time and the ability to determine after careful and thorough study, the best and most effective system of providing field programs with support, training, technical assistance and clearinghouse information services. It would remove the artificial handcuffs imposed upon the present Corporation by Presidentially dictated adoption of an ill-conceived amendment to the Legal Services Corporation Act, an amendment which was overwhelmingly defeated in the Senate and ultimately not accepted in the House when the Conference Report was approved. Because of the vital importance of the present support centers to the effective delivery of legal services to the poor of this nation and because of our concern that such services continue without interruption in the most effective form possible, the PAG has authorized me to respond to this Committee's request to testify with the strongest possible support for this legislation.

Legal Services Support Programs

The legislative debate in the Congress about the programs called "back-up centers" was often confused and lead to a general misunderstanding about their functions. This was partially a result of affixing a label to programs which provide widely varying services and serve diffuse functions. There was also a general lack of information about what the centers actually do. Some centers burdened with the label primarily provide specialized legal services to indigent clients either as counsel or co-counsel with local programs. Others provide training, in both substance and skills (management and lawyering skills), technical assistance, management assistance, clearinghouse services and evaluation. All of these centers provide vital support services to field programs; most of them also provide independent assistance to eligible clients or client groups—either directly or in conjunction with other legal services programs.

The Need for Specialization

Specialization is a fact of life of the present legal system and is likely to grow in importance. Law firms in the private sector specialize in any one or more of a number of fields such as tax, patent or labor law. The legal units of almost all governmental agencies have speciality and appellate sections. If we were designing a program to provide legal assistance to the poor, the use of specialization would appear obvious.

For the poor, such specialization is not only necessary, it is critical. The vital food, clothing, shelter, and other basic needs and conditions of the poor are to a large extent determined by a complex tangle of federal statutes and regulations and complex administrative relationships between state, local and federal agencies. To see that such regulatory and statutory provisions are implemented and administered in accordance with the law requires constant attention to changing government regulations and developments. In addition, poverty law is a new and rapidly changing subject. Case law is expanding at such a pace that, in many instances, a poverty lawyer in the field would have little chance of knowing the most recent developments and then applying them to an individual case. There are few privately funded poverty law reporting services, form books or texts. Specialized legal services is essential to provide the mechanism for monitoring and maintaining a liaison with the numerous federal and state agencies which have a special impact upon the poor as well as being essential in providing the attorneys in local offices with a ready source of information in areas where they would otherwise lack expertise.

It would be virtually impossible for local legal services programs, no matter how substantial in resources or personnel, to develop the capacity to provide the legal assistance needed by the poor to assert their rights and entitlements at the

federal level. For example, the program which I direct in Seattle Legal Services, could not provide the type of national representation which clients in our offices require unless we became a national center in all of the legal fields relevant to the poor. Our attorneys cannot spend their time focusing on the current developments in the federal agencies while they are occurring. The program I direct is a large program with 41 attorneys and 11 offices. We have offices specializing in the representation of institutionalized patients, prisoners, Indians on reservations and the elderly as well as specialized units in our neighborhood offices covering housing, public entitlements, consumer problems and domestic relations.

Yet we still need support assistance. For example, in 1971 we sued the United States Department of Agriculture challenging their refusal to implement a surplus food commodity program in three Western Washington Counties. At that time the unemployment rate in the Seattle area was the highest in the country. Although there was a food stamp program many of our clients could not even afford to purchase food stamps. At one point during the year, Seattle's sister city in Japan sent a boat load of rice to Seattle to assist in feeding people during this crisis.

The attorney in our program who had clients with this problem had an active caseload of approximately eighty five cases including contested divorces, tenant evictions and utility cutoffs. There was no way for him to spend the time researching and litigating this important issue.

I contacted the Center on Social Welfare Policy and Law. They assigned an attorney to work with our attorney and together they sought to convince the bureaucracy at Agriculture to change its policy which prohibited food commodity programs in the same political jurisdiction where food stamp programs were in effect. After negotiation became fruitless a law suit was filed.

Just before Christmas the court ruled that the Department of Agriculture had acted arbitrarily and capriciously and in violation of the intent of Congress in refusing to implement the commodity program. Even after we won the case we had to monitor the implementation which took two months.

In another matter which came up in 1972 we successfully settled a case where we had filed a suit against a school district which was misusing Title I Education funds. That case involved extensive discovery which then had to be analyzed by lawyers who were experienced in the area of school financing and educational programming. The Center for Law and Education provided our attorneys with invaluable support and expertise which allowed us to reach a successful resolution.

Tomorrow at a YMCA camp in Western Washington a lawyer skills training session for new and inexperienced lawyers is being conducted by staff from four of the legal services programs in our state. Our lawyers learned how to train other attorneys by going to training sessions for trainers which were conducted by the Legal Services Training Program at Catholic University.

If I had the time I could provide you with numerous other examples of support services which have been provided to the Seattle program over the past few years involving such issues as pregnancy disqualifications for unemployment benefits, racial discrimination in union apprenticeship programs, Indian fishing rights, Social Security termination, housing relocation, and collection agency practice. The important point is that our lawyers all carry heavy caseloads and are very busy. They do not have the time, and in many instances the requisite experience, to address the problems of their clients by themselves. Still in Seattle we are better off than most.

Imagine how difficult this is for the program within a one or two attorney office. In the Upper Peninsula Legal Services Program in upper Michigan, several offices, located literally hundreds of miles from cities with adequate law libraries having federal statutes and regulations, could not provide assistance to their clients without having available access to the national substantive centers.

Thus, projects providing specialized assistance to eligible clients either directly or in conjunction with other legal services programs are an essential component of a national legal services system. The Corporation must assure their continuation.

The Corporation itself cannot litigate or provide legislative representation on behalf of eligible clients because of the wise inclusion of a prohibition against such activity. (See Section 1006(c) (1) and (2) of the Legal Services Corporation Act of 1974). And while we believe that the legislative history is clear that the Corporation can provide for such specialized programs—whether regional, state or national—under the general grant making authority of Section 1006(a) (1)

of the Act, we are aware that the critics of the support centers will make every effort to assure that the Corporation does not fund such national litigating programs. This legislation is needed if for no other reason than to remove all doubts of the Corporation's ability to continue and expand the legal services program's specialized support centers.

Additional Needs of the Local Legal Services Programs

There are however additional needs of the 263 local legal services programs and over 2,400 local legal services attorneys which require the continuation of a support capacity. No matter how well organized and managed—and local legal services have developed highly sophisticated management techniques with the assistance of the Management Assistance Project and the Training Program at Catholic University—local programs face an appreciable turnover of lawyers and a large number of lawyers who have little or no prior practice experience. This is a result of a number of factors not likely to change within the near future: poor working conditions; inadequate facilities; no career patterns; uncertainty in funding and future job prospects; low salaries and benefits; lack of acceptance by the judiciary and other members of the bar, etc. In addition, many programs cannot help but maintain a huge caseload because of the increasing demand made for legal services. Try as we may to develop special clinics such as domestic relations units using paralegals, fill-in-the-blank forms and automated processing of files—and the Seattle program like many others, has developed such approaches—attorneys in the neighborhood offices of my program still have large caseloads and do not have as much time as they need to do thorough research. Nor do they have the overview to undertake comprehensive consideration and exploration of all potential claims. Moreover, we are not free to represent only those clients we wish; within reasonable caseload control limits, we still try to represent all indigent people having legal problems.

The same was true with the Georgia Legal Services program I directed in 1974-75. Georgia Legal Services was a statewide program with 9 field offices and one administrative and litigation office; it covered the entire state except for metropolitan Atlanta. Although we developed some support capability in the central office, that office, and the local offices, were dependent upon the assistance, particularly in litigation, of the national support centers. For example, our program worked closely with the Center on Social Welfare Policy and Law on several major welfare cases affecting our clients. The Center also provided representation of these clients before HEW, a capability we did not have and could not develop without diverting resources away from the more immediate problems of the clients coming to our offices. Yet, the vital assistance of the center was absolutely necessary to our ability to provide representation in the cases in Georgia and necessary to assure HEW support for the statutory rights denied our clients by the Georgia welfare department.

The problems are compounded in a small program with neither access to a central litigation office nor to lawyers with any possibility of developing expertise in one or two substantive areas. The legal services program in Battle Creek, Michigan, (Calhoun County Legal Aid) for example, has only three lawyers and covers two cities with an office in each city. This program has participated in major consumer and welfare litigation; however, it could not do so alone and looked to the expertise, technical knowledge, and litigation experience of attorneys at the welfare and consumer law centers for assistance on its cases.

Assistance to local offices is provided through a variety of devices. Support centers prepare extensive manuals and handbooks, unavailable in the private sector. These manuals look to the actual needs of legal services attorneys and bring the most up to date information to the field attorney office. For example, the materials prepared by the Consumer Law Center on Truth in Lending assure every legal services attorney with information on exactly how to handle his client's case. The centers also prepare memoranda and model briefs on recurring problems faced by large numbers of clients which can be easily adapted to the problems of the individual client in a state. The centers, through periodic mailings and newsletters, also identify issues subject to litigation or administrative representation and discuss the difficulties of certain approaches and strategies. Thus, the centers seek to develop and make available to local programs and attorneys litigation approaches which meet the needs of poor people similarly situated with similar problems. They also help attorneys with little knowledge and experience to determine whether the cases they might bring are founded on misconceived theories or on theories which have little chance of prevailing.

The Centers perform other functions equally as important. Training is undertaken by the substantive support centers—both in national training programs and at the office sites of the center or the local programs. Some training is directed at young and novice attorneys and some at lawyers specializing in the areas of expertise services by the Center. The Migrant Legal Action Program for example helped the Toledo Legal Aid Program establish an Ohio migrant program and helped Northwest Washington Legal Services establish a capacity to address migrant issues by training staff and providing extensive on-site assistance during the migrant season on numerous matters requiring specialized expertise, such as enforcement of federal health and sanitation codes and the Fair Labor Standards Act, and implementation of the federal food programs for migrants.

The Legal Services Training Program has conducted over 45 training events affecting virtually every field attorney. The National Paralegal Institute has trained over 250 paralegals from local projects. The assistance of these training programs is often greater than merely assuring technical expertise of a staff attorney. For example, in Detroit and in Philadelphia, the National Paralegal Institute worked with the paralegals of the Wayne County Neighborhood Legal Services and Community Legal Services to evaluate their potential and develop new uses of their time and abilities. As a result, the paralegals have greatly expanded their role in the program and have lessened the need for staff attorneys working on intake, on domestic relations, and on administrative hearings before the welfare department and unemployment bureau.

Finally, the centers also provide assistance in program administration, program management, caseload control and personnel utilization. Although the NLADA Management Assistance Project is primarily responsible for this type of support, other centers often assist in program evaluations of specialized units and aid project directors in developing and strengthening their offices.

Effectiveness and Accountability of Current Centers

The two central functions of the support centers—specialized litigation and support and training for local programs—have been widely praised and acclaimed within the legal services community. Although the Centers were originally established at law schools and were often without any direct accountability to the field programs, the needs of clients and local legal services attorneys soon forced the centers to develop mechanisms to assure field input into decisions and client and field control over the resources of the centers. The centers became much more litigation oriented and were manned by litigators with field experience or experience from the most prestigious private law firms and the governmental agencies with whom the centers related. The training Programs focused on the needs of the legal services attorney and program—as demanded by the field programs—and the Management Assistance Project focused on the types of management assistance demanded by project directors.

Thus, by the spring of 1973, when the evaluation division of OEO sought to provide a basis for discontinuing the centers and ordered an extraordinary evaluation of all specialized litigation centers, the support which the centers had within the community was strong and their accountability assured. What the evaluators found was a remarkable record of achievement and support and a developed capacity for responding rapidly and thoroughly to the thousands of requests for assistance from local legal services attorneys. The centers were performing with a high degree of professional competence and were thoroughly expert in the substantive areas they served. We believe the same results will be forthcoming when the study undertaken by the Legal Services Corporation is completed.

Frankly, the problem with the centers appears to be their success at carrying out the very job which the Office of Legal Services and the field programs wished them to perform. Looking at the arguments made against the centers, they boil down to an attack on the types of cases in which the centers have been involved or on the success of the centers in providing the field attorney with the means to provide her or his clients representation equal to that of the opponents. Actually most of the attack on support centers have been leveled at legal services involvement in cases which involve a particular viewpoint or ideology or which involve litigation against powerful private interests or governmental units. And the attack has gained momentum because of the substantial success and great benefits accorded to eligible clients. A careful examination will show—as all have shown in the past—that these controversial and successful

cases did not happen in a vacuum or in isolation; they occurred when the centers were asked to participate by eligible clients or, in most instances, by requests from local legal services programs.

Most of the work product of the support programs is directed primarily toward enforcing present rights and entitlements accorded by federal, state and local statutes and regulations on behalf of indigent clients. A good example is provided by the extensive work undertaken by the National Health Law Project to assure implementation of the 1968 federal law requiring states to establish a preventive health screening and dental care program for indigent children (Early and Periodic Screening, Diagnosis and Treatment program). HEW took three years to even propose draft regulations to implement this mandatory federal law and did so only after extensive discussion and actual litigation was brought by eligible welfare recipients. The National Health Law Center played the central role in that initial enforcement effort. Moreover, once the regulations were issued, the problems did not resolve themselves for no state sought to implement the program in a reasonable or comprehensive manner and many did nothing. Thus, the National Health Law Center worked with HEW in its enforcement efforts and with local legal aid programs, including for example, Monroe County (New York) Legal Aid and San Francisco Neighborhood Legal Services, in litigation on behalf of indigent clients denied benefits under the program. As the evaluators for one of the support centers noted, "In contrast to so called 'law reform' . . . cases, these cases more properly should be described as raising questions about enforcement of laws which have been neglected for many decades."

The Need For Legislation

Clearly the national legal services program must have the capability to assure specialized legal services and support, training and evaluation assistance to local legal services programs. In our view, the only realistic way to assure the continuation of these functions at an acceptable level within the national legal services program, is to adopt HR 7005. There are several reasons for this.

First, the present statute separates the "research," "training," "technical assistance" and "clearinghouse" functions from the litigation functions of the back-up centers. While this may not pose an insurmountable problem for the "clearinghouse" function, it will create substantial if not insurmountable difficulties for the other functions. The research sought by the local legal services attorneys is not the abstract discussion of statutes, rules and regulations. What is sought is the expertise of actual litigators and attorneys who have actually participated in developing similar cases or in negotiations with the agencies. A case book on welfare law is not helpful; a manual which is current, containing documents or immediate practical use, and a text of discussions of strategy—both procedural and substantive—is what the local legal services attorney needs. This can only be written by attorneys with the necessary practical expertise and accompanying insight. Moreover, the requests for assistance usually arise in a litigation context. Only an attorney with practical litigation experience can make litigation judgments and discuss strategy questions and only such a person will be acceptable to the local legal services attorneys if alternative more efficient administrative and legislative solutions are needed.

Local legal services attorneys have grown to rely upon the support center attorneys not only because of the success of the advice received but also because of the day-to-day contacts with them on specific legal issues. This interaction did not occur when the centers were research oriented and cannot be expected to occur if the support operation again become such.

Under the present Act, new attorneys which the Corporation would seek to hire would be prohibited from litigating or providing legislative or administrative representation or assistance in litigating or other representation and would not gain the necessary expertise to be of assistance to the field attorney. Experienced attorneys are likely not to seek employment if they cannot directly participate in such litigation or representation. Moreover, the attorneys actually litigating or representing clients before the agencies and legislators will not be able to easily and efficiently share their expertise with the Corporation attorney hired to provide back-up research, training or technical assistance.

Second, if such a bifurcation of function could actually be set up, it will pose substantial practical problems for the local legal services attorney. When faced with a problem on which he or she needs assistance, the local attorney will have

to look not just to one center for advice, papers, research and a discussion of strategies, but to lawyers or programs having similar cases and to the Corporation for research assistance. There will be no one central operation where materials can be obtained, questions answered and litigation assisted or undertaken.

Third, to separate the actual experts, who represented clients before agencies, in the courts and before legislatures, from those who would be preparing manuals, newsletters, and other "research" would be wasteful, duplicative and administratively inefficient. The Corporation will also face the problem of creating advisory boards in each subject area for the attorneys focusing upon that area. Surely the limited use of funds available to the poor should not be used to create top-heavy and duplicative administrative bureaucracies. In addition, the Corporation will have to duplicate libraries, hire staff and establish contacts, all of which will take time and disrupt the present support structure.

Fourth, the Corporation should not be handcuffed in its efforts to establish a rational and thorough range of specialized programs and support capabilities. It should be given the time necessary to carefully evaluate all of the means of providing specialized services and back-up and then have the power to implement the most effective and efficient system after making a thorough evaluation.

HR 7005 addresses these problems with the present Act. It restores to the Corporation the ability to fund support services through grant or contract. It provides the Corporation with the time to decide this difficult question. HR 7005 will also assure that the necessary interrelationship between the litigation functions of the present centers and the support functions is developed in the most cost efficient and effective manner possible.

Unfortunately there is no time to spare. The Corporation has undertaken a study which must be completed and digested in time to act on the present grants and contracts before March 31, 1976. There is no likelihood that the Community Services Administration will extend the grants and little likelihood that the Corporation will take effective action until the last minute. It is impossible to suspend federal assistance to the present programs for any substantial period of time; attorneys will leave and find new work, contacts with local programs will be cut off, resources will be dissipated and files distributed to attorneys who will take over the cases. This disruption will effectively kill the centers for a substantial period of time and result in excessive costs to the Corporation, the public and, most importantly to our clients. Thus, it is imperative that the Congress act on this legislation immediately and assure its passage in time for its impact to have real effect on the activities of the Corporation and to prevent the dissolution of these critically valuable resources.

Mr. KASTENMEIER. Now, the Chair would like to call Mr. F. William McCalpin, on behalf of the American Bar Association. Mr. McCalpin is chairman of the American Bar Association's standing committee on legal aid and indigent defendants.

You have a brief statement, Mr. McCalpin, so you may proceed.

TESTIMONY OF F. WILLIAM McCALPIN, ESQ., CHAIRMAN, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

Mr. McCALPIN. Thank you, Mr. Chairman. In view of the hour and my understanding of the constraints on the time of the subcommittee, I would like leave to revise the statement which has been presented here in light of some last minute preparation of mine that the members of the committee, as former trial lawyers, will understand, that the most effective preparation is generally the night before, and I was going to revise my remarks in some respects anyway, and would certainly like to do so in view of the testimony which has been given here today without taking up the time of the subcommittee.

I would just like to make one or two points in the course of this presentation. As the statement indicates, I am a practicing lawyer in

St. Louis, Mo., and as the chairman has so graciously indicated, I am the chairman of the American Bar Association's standing committee on legal aid and indigent defendants.

The invitation to the American Bar Association was, of course, properly, originally extended to the president, the Honorable Lawrence E. Walsh of New York, and I appear here today as his designated representative because of his duties on behalf of the association elsewhere.

I think that I would not attempt to run down my remarks except to say that my own reading of the act is somewhat at variance, I think, with Dean Cramton's, and more in accord with some of the remarks that I have heard from members of the subcommittee here this morning.

I would suggest that 1006(a)(3) in effect says that all research activities supported by the corporation must be in-house. And then I think the important thing is to read 1006(c) in connection with that, which in my judgment requires that the in-house research shall not involve participation in litigation—this is, (c)(1) and (c)(2) says, I submit, that in-house research shall not be designed to influence legislation.

Thus, I think we come to two possibilities. The corporation, through its staff, may indeed provide client-related research activities to local operating legal service agencies as long as the problem does not involve litigation or legislation. Thus, if the problem requires only counseling or perhaps an administrative appearance, because I am not sure whether litigation means judicial litigation in the traditional sense or whether it may include administrative representation, but if the problem requires only counseling or perhaps administrative representation, the corporation would seem to be permitted to supply the research support, even on an individual client's problem.

If, however, 1006(a)(3) is read literally, and I will advert in a moment to the problems with reading it literally, but if it is read literally, then the corporation will not undertake research by grant or contract, and this may amount to a kind of grant condition that no funds of a grantee may be used for research. If that is the case, the law may be saying in effect that a local legal aid attorney can go to court for a client, but he can't prepare to go to court for that client.

Obviously, that is a preposterous rule and as Dean Cramton has pointed out, it is at variance with other provisions of the act and at variance with some provisions, some statements in the legislative history.

One of the problems with relying on legislative history is that some of it was made by Congressional Record insertions following consideration of the bill.

Some of the legislative history which is preenactment was, as Mr. Badillo pointed out, not engaged in by lawyers, but by learned members and experienced members of the House who are not lawyers.

Thus, it seems to me that we may be in the position where the Corporation may indeed engage in client-related support activities in counseling, and perhaps administrative hearings, but that the Corporation may not provide funds by grant or contract for the very most important activities of the support centers which are client-related litigation.

I would agree that the Corporation could engage in broad-gauged kinds of support activities, such as drafting legislation not related to a client, model briefs not related to a real problem, model pleadings not related to a real problem, but as some of the speakers who have preceded me have indicated that is not how it happens in the real world. In the real world the problem arises with a specific individual.

A specific client cannot be handled within the confines of a program and gravitate toward the backup center which would be precluded then from handling the real life problem of a real life client, and I think that is the difficulty that we are in now, and it is why I have suggested in my remarks that for a number of reasons, including the resolution of the current misunderstandings and difficulties, that this act should be enacted into law.

My remarks also note the desirability of providing the flexibility for the Corporation, the problems which I think have not been addressed of the appearance in the client community of having this done by the Federal corporation rather than by independent agencies. I think there is a very real reason why the local legal aid lawyers in the field are not Federal employees. It is because of the appearance of independence to the client community, and I submit that it is just as important to have that appearance of independence for the support activity as it is for the representation itself, and that provides an additional reason why the backup centers should remain independent and why this statute should be enacted to permit that.

I will not trespass further on the time of the subcommittee, but I will be glad to answer any questions, if I may submit a revised statement.

Mr. KASTENMEIER. Without objection, the committee will be pleased to receive the revised statement from Mr. McCalpin and we will make that a part of the record.

I appreciate the last point you were making and unfortunately we did not really pursue it with Dean Cramton, and that is from a policy standpoint, lacking this flexibility, the advisability of a total Federal imprint on these activities by virtue of Federal takeover in a sense of direct operation within the Corporation, and whether that is to be preferred. At the very least it would seem, would it not, that the Corporation ought to have the flexibility not to have to incorporate the personnel as its very own?

Mr. McCALPIN. Well, let us take as an example the effect on a client that has a welfare problem in which the Federal Government is the antagonist. If he goes to his local legal aid program and the attorney says: "Yes; we will take your case, but we have got to draw our support from the Legal Services Corporation in Washington, D.C.," the client may view the Corporation as an arm of the Federal Government and the client may then ask: "What kind of help am I going to get from them? They are the people I am fighting."

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. RAILSBACK. It is my understanding that right now your backup centers have actually used Federal funds for law libraries, is that right, right now?

Mr. McCALPIN. Well, I would suppose that some of the backup centers have used Federal funds to provide at least a certain limited amount of in-house research tools. I come from a sizable law office.

We have the Southwestern Reporter, but we don't have the National Reporter system. I would suppose they have some things related to their activities, but not a full-scale library. You have to do some things in your own office and you go to a law library for the rest.

Mr. RAILSBACK. I think you are right and I think they do have that authority now to do that and I just also can't help but wonder whether that kind of restriction, that kind of a general restriction on research, might even create problems as for giving them money to build up any kind of a law library.

Mr. McCALPIN. I would think so. It seems to me one of the real problems is that the statute uses the word "research" without qualification or definition and as I understand the effort which the Corporation is making, and commendably, I suppose, it is to use the legislative history to try to create a definition or qualification of the word "research," and I think that that is a troublesome prospect.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. Incidentally, this subcommittee is concurrently entertaining the question of whether by statute to allow awards of attorneys' fees, which is a somewhat similar question. Does your ABA subcommittee deal with that question as well?

Mr. McCALPIN. I would have to say, Mr. Chairman, that that very live and hot topic is being addressed by the American Bar Association's Consortium on Legal Services and the Public, of which the committee that I chair is a constituent element. There are certain proposals floating around within that consortium now. They will be addressed at a meeting of the consortium to be held, I think, in December or January. I talked to the chairman of the consortium within the last couple of weeks and he was doubtful that there would be a proposal sufficiently ripe for presentation to the house of delegates in February. He thought that at the summer meeting it was more likely.

Mr. KASTENMEIER. Well, this is part of the larger question of delivery of legal services and payment for legal services and equities in litigation and certainly in the Federal system.

Mr. McCALPIN. But, of course, the provision of the allowance of attorneys' fees is a matter of importance to the legal aid committee because of the possibility that clients representing poor people might be awarded attorney's fees, and to the extent that they are, it makes the other funds that they receive go further, and certainly they need to go further.

Mr. KASTENMEIER. Some of the same questions arise in the context of those hearings as arise in terms of legal services appropriations.

Mr. McCALPIN. Exactly right.

Mr. KASTENMEIER. Well, the subcommittee is indebted to you, Mr. McCALPIN, for coming so far, representing the views of your own standing committee, and your personal views on this question.

[The prepared statement of F. William McCALPIN follows:]

STATEMENT OF F. WM. McCALPIN ON BEHALF OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and members of the subcommittee: My name is F. Wm. McCALPIN. I am a practicing lawyer in St. Louis, Missouri, and currently serve as Chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. Since being contacted by the Subcommittee staff regarding these hearings on H.R. 7005, I have been designated by Lawrence E. Walsh, President of the American Bar Association, to appear before you as the spokesman for the Association on the legislation.

So that the record will be complete, I should note at the outset that the Association through its fund for Public Education had for several years received funds from the Office of Economic Opportunity and other sources to support the National Resource Center on Correctional Law and Legal Services, a back-up center. This funding was terminated by mutual agreement approximately one year ago.

I would also like to note that the House of Delegates, the policy making body of the Association, has not specifically acted on H.R. 7005. However, the record of past ABA actions clearly supports the enactment of the bill. For the past ten years we have consistently supported the provision and expansion of legal assistance to the poor in a manner which assures independent, professional and effective advocacy on their behalf. Similarly, the Association has consistently opposed any efforts to limit the scope or quality of such services. The most recent policy statement of the Association, adopted by its Board of Governors in May, 1974, urged the enactment of H.R. 7824, the Legal Services Act of 1974, as reported by the House-Senate Conference Committee (H. Rept. 93-1039). Since this version included provisions similar to those which would result from the enactment of H.R. 7005, it is clear that the policy of the Association supports the enactment of the legislation before the Subcommittee.

The Legal Services Corporation Act as passed by the Congress and signed by the President reflected the so-called Green Amendment in Sec. 1006(a)(3), which requires the Corporation to undertake directly and not by grant or contract the following activities relating to the delivery of legal assistance:

- (A) research.
- (B) training and technical assistance, and
- (C) to serve as a clearinghouse for information.

As this Subcommittee knows, the Green Amendment was re-inserted in the legislation at the latest possible hour after the bill had emerged from the conference committee and passed the House. Since the amendment had not been considered in committee, its meaning has been the subject of some confusion and conflicting interpretations. The Subcommittee may wish to advance the current legislation if only for the purpose of eliminating the confusion and to give the Congress an opportunity fully to debate and deliberate an issue of such critical importance and concern to the Legal Services Corporation and to our poorer citizens seeking to assert and protect their rights through our justice system.

I am advised, Mr. Chairman, that the Board of Directors of the Corporation has received an opinion from counsel which suggests that if the purpose of the Green Amendment was to eliminate the funding of independent legal services back-up or support centers designed to provide substantive support in specialized areas to local legal services projects, the amendment failed to achieve its purpose. Sec. 1006(c)(1) of the Act clearly prohibits the Corporation from participating in litigation on behalf of clients other than the Corporation. Since, the bulk of the back-up center activity is directly related to litigation on behalf of clients, the funding of back-up centers as the term is generally understood must continue if the general purposes of the act are to be fulfilled.

Insofar as activities outlined in Sec. 1006(a)(3) do not directly relate to litigation on behalf of clients other than the Corporation, i.e., pure research, one would have to conclude that such functions must be assumed by the Corporation. I have not had access to that opinion but am aware of the general conclusion as reflected in documents made public at meetings of the Board of Directors.

My own reading of the Act is not so optimistic. Section 1006(a)(3) in effect says *all* research and other similar activities supported by the Corporation must be "in house". Section 1006(c)(1) requires that in house research shall not involve participation in litigation and subsection (c)(2) says in house support shall not influence legislation. This suggests two possibilities.

(1) The Corporation through its staff may provide client related support and research activities to a local operating legal service agency as long as the problem does not involve litigation or legislation. Thus if the problem requires only counseling—or perhaps administrative representation—the Corporation would seem to be permitted to supply the required support. Query if this is what the proposer of the amendment had in mind.

(2) If § 1006(a)(3) is read literally—that the Corporation may not undertake research by grant or contract—this may amount to a kind of grant condition that no funds of a grantee shall be used for research. If that is the case the law may be saying that a local legal aid attorney can go to court for a client but he can't prepare for his court appearance by doing any research. Such a result would, of

course, be preposterous and completely out of keeping with the purposes of the Act. However, I find in the legislative history only one isolated statement by Senator Javits which tends to oppose such a construction and a plethora of statements that all support must be "in house" and, of course, that the in house support not relate to specific clients involved in litigation or seeking legislative action. If there is any possibility that the necessary, client-related, support activities cannot be provided in house or outside, then the Act must be amended.

Leaving aside the interpretation of the statutory language for the moment, I would urge upon you as a matter of policy the wisdom of continuing the back-up or support function as one to be performed by "recipients" or "grantees".

At the outset, let me emphasize that I am not in a position to support the ultimate continuation or extension of any existing back-up center. I am not qualified either as an individual or as a representative of the American Bar Association to evaluate the performance of individual programs. Furthermore, I am confident that the Corporation will undertake a comprehensive evaluation of existing services and determine what program, function and structural changes may be necessary in continuing the back-up center function. This of course will take time and this in itself argues persuasively for the enactment of H.R. 7005.

I am informed that the Subcommittee will hear from Carl Eardley, a distinguished former Deputy Assistant Attorney General in charge of the Civil Division of the Department of Justice, who headed a task force which reported to the Board of Directors of the Corporation on the absolute essentiality of continuing specialized legal services such as those provided by the existing back-up centers. As a private lawyer with some years of experience, I can emphatically second his conclusions. It is difficult to contemplate fulfilling the lofty purposes of the Act as reflected in Sec. 1001 without the availability of high-quality specialized services such as those now provided to local legal services projects and attorneys by the back-up centers.

In keeping with the political and professional independence which the Corporation structure is designed to provide to the national legal services program, I would argue strongly that the back-up function be continued as an autonomous structure dependent upon the Corporation only for funding. The appearance of independence from policy control or direction is most important in this program which depends so heavily on client confidence for its success. In arguing for independence however, I do not overlook the policy and quality control which must and, quite properly, is exerted by funding decisions of the Corporation. There must be accountability for the expenditure of public funds, and the grant-making process of the Corporation must be designed with that public accountability in mind.

The tendency to consider the back-up center function as analogous to the specialized division or office of a government agency or department must be avoided. The government agency differs from the Corporation primarily in the identity of the *client*. The Department of Justice, for example, represents only the United States. The legal services program, through its funded projects and programs has as its clients the poor citizens of our country, individually and, where appropriate, collectively. Thus, I would recommend that vertical integration of the back-up centers under the centralized policy control of the Corporation be avoided.

An additional argument for the continued independence of the back-up centers relates to the demonstrated ability to attract highly-qualified and well-motivated lawyers and representatives of other disciplines. It is highly questionable that this recruitment potential will continue if the centers become entities controlled by the Corporation. Similarly, the centers have demonstrated an ability to attract significant funding from sources such as foundations and universities, an ability which would certainly be impaired if viewed as divisions or offices of the federally-funded Corporation.

Perhaps the most compelling argument for the enactment of the legislation, Mr. Chairman, is the need to provide to the directors and officers of the Legal Services Corporation the flexibility to experiment with the variety of structures and systems which will provide the most effective, efficient, and highest quality legal service to the poor of this country. As close observers and supporters of the program over the past ten years, the American Bar Association has been impressed with the performance of the back-up centers and other specialized programs which train legal and para-professional personnel. To force upon the Corporation a complete and abrupt restructuring of these functions would be a most serious mistake in my judgment. We would argue most strongly that you

assure the Corporation that it will have the flexibility it needs to provide effective legal services to the poor.

In conclusion, Mr. Chairman, the American Bar Association urges the Subcommittee to give favorable consideration to the legislation before it. While not conceding that its enactment is essential to the continuation of independent back-up centers funded by grant or contract by the Corporation, its passage would eliminate the confusion that exists with respect to application of § 1006(a) (3) to existing centers and will assure to the Corporation the flexibility which is so necessary and desirable as it begins its critically important mission.

A final word, Mr. Chairman, of a more general nature. On behalf of the American Bar Association, which considers the creation of the Legal Services Corporation one of the outstanding accomplishments of its "public service program," I wish to offer you our pledge of cooperation and counsel as the Subcommittee begins its oversight in this important area. We have labored long and hard since endorsing the principle of federally-funded legal assistance to the poor in civil matters in February, 1965. Our good offices are available to the Subcommittee as they have been before to the Education and Labor Committee, your predecessor in this historic venture.

Mr. KASTENMEIER. On Friday, we will continue the hearings with four other witnesses, at least one of which will be in opposition to the legislation, and that will conclude hearings on the question of whether or not H.R. 7005 should pass, which would authorize the funding of legal backup centers.

Until Friday morning at 10 o'clock in this room, the subcommittee stands adjourned.

[Whereupon, at 12:53 p.m., the subcommittee recessed, to reconvene at 10 a.m. on Friday, October 31, 1975.]

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LEGAL SERVICES CORPORATION ACT AMENDMENT

FRIDAY, OCTOBER 31, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2226, Rayburn House Office Building, the Honorable Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Drinan, Pattison, and Railsback.

Also present: Gail P. Higgins, counsel; and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The subcommittee will come to order.

Today, the Subcommittee on Courts, Civil Liberties and the Administration of Justice resumes its second and final day on hearings on H.R. 7005, a bill to amend the Legal Services Corporation Act of 1974.

The purpose of the amendment was to give the board of the new corporation the option to provide specialized support legal services by grants or contracts, as well as directly. The present law is ambiguous on the powers of the Corporation.

On last Wednesday, we heard from supporters of H.R. 7005, including Mr. F. William McCalpin, American Bar Association, who was designated by President Walsh to speak on the bill; Mr. Gregory Dallaire, who is a legal services project director who represents the project advisory group, National Organization of Project Directors.

On that day, we also welcomed Dean Roger Cramton, chairman of the board of the Legal Services Corp., which board has taken no position on the amendment.

On Wednesday, representatives of two of the backup centers also testified, indicating the functions and the need for these centers.

The bill was introduced on May 15, 1975, and only one of the letters which I received expressed opposition, or very strong reservations, and that was from the American Farm Bureau. Our first witness this morning is Mr. Arthur West, who is president of the New Jersey Farm Bureau, and he is representing the American Farm Bureau today.

Other witnesses will be Mr. Bernard Veney, executive director of the National Clients Council, Mr. John G. Brooks, vice president of the National Aid and Defenders Association, and Mr. Carl Eardley, formerly with the Justice Department for over 30 years.

I regret to announce that Mr. Daniel Reznick, president of the District of Columbia Bar, will be unable to appear before the subcom-

mittee today. I have a copy of this prepared statement, which includes the District of Columbia Bar Resolution of July 10 of this year, and supports the bill in question.

At this point, I wish to accept for the committee and insert that statement for the record.

[The prepared statement of Daniel A. Rezneck follows:]

STATEMENT OF DANIEL A. REZNECK, PRESIDENT OF THE DISTRICT OF COLUMBIA BAR (UNIFIED)

Mr. Chairman and members of the committee: My name is Daniel A. Rezneck; I am the president of the District of Columbia Bar, the Unified Bar which represents over 20,000 lawyers in this jurisdiction. Our Bar is the third largest bar association in the country; only the California and Texas state bar association are larger.

It is my privilege to testify today on behalf of the District of Columbia Bar in support of H.R. 7005, which was introduced by Chairman Kastenmeier. We consider this legislation to be of great importance, and urge its prompt passage.

Our Bar has a particular concern with the legal services program. Members and leaders of our Bar have been in the forefront of the movement to establish and maintain an effective national legal services program. Of course, we have in the District one of the oldest and best-regarded field programs: the Neighborhood Legal Services Program, which maintains six offices here to serve the poor of the District of Columbia. In addition, eight of the national, specialized programs maintain their offices here. The Legal Services Training Program is at the law school of Catholic University; the National Paralegal Institute, the Bureau of Social Science Research and the Migrant Legal Action Program have their offices in the District. The National Senior Citizens Law Center, the National Health Law Program and the National Housing and Economic Development Law Project all maintain offices here. In addition, the Management Assistance Project at the National Legal Aid and Defender Association is here in the District. Each of these organizations has been a grantee of the Office of Legal Services at OEO; they perform research, clearinghouse, training and technical assistance services in addition to the litigation activities in which some of them engage. The special situation of the District of Columbia has caused our Bar to have not only the usual interest of a state Bar in the effectiveness of the legal services program but also a particular acquaintance with and concern for the specialized and national centers that are a vital part of that program.

Out of this knowledge and concern comes our strong endorsement of H.R. 7005. At the July 10, 1975 meeting of the Board of Governors, this resolution was adopted:

Resolved, that the D.C. Bar strongly supports H.R. 7005, which explicitly would afford the Legal Services Corporation Board the authority to select the most effective manner of providing research, clearinghouse, training and technical assistance services, and further

Resolved, that the president of the Bar testify in support of this legislation * * *

Pursuant to that resolution, I wrote to the chairman on August 1, 1975. I hope that that letter may be made part of the record of the hearing.

It is clear to us that the national legal services program must have what any good-sized law firm has: a capacity to provide specialized assistance in particular areas of the law. Indeed, having this capacity is even more important for the legal services program than for a law firm for at least three reasons: because many of the lawyers in the operating programs are young and inexperienced; because caseloads are extraordinarily heavy; and because many of the programs and issues with which these lawyers must deal involve very complex national programs. Funding for the legal services program is modest at best; the inadequate funds available should not be wasted by having lawyers repeatedly duplicate one another's work. And just as some lawyers in the program must have a mandate to develop real expertise in particular areas of the laws affecting the poor, so must each of those lawyers have the mandate to put that expertise to work in whatever fashion will be most effective, be it by participating in litigation or by training others or by performing and publishing research. It would be wasteful in the extreme to have many lawyers spending time trying to become experts in the same area. Similarly, it would be wasteful to take a lawyer who

is an expert in one area (say, federal social security law or landlord-tenant law) and allow that lawyer to use his or her expertness only by participating in litigation, prohibiting the lawyer from sharing that knowledge with others by means of "training," "technical assistance," or "clearinghouse" activities and prohibiting the lawyer from expanding that knowledge by "research." The legal services program must have a capacity for specialization, and its specialists must be allowed not only to participate in litigation but also to perform research, training, technical assistance and clearinghouse functions. It is for this reason that we strongly endorse H.R. 7005.

We think that the Legal Services Corporation Act certainly authorizes the Corporation to make grants to or contracts with institutions which furnish specialized legal assistance to eligible clients on a national basis. We think it certain that such grants or contracts may be made to fund participation in litigation; indeed, section 1006(c)(1) expressly precludes the Corporation from "participat[ing] in litigation on behalf of clients other than the Corporation." Similarly, section 1006(c)(2) precludes the Corporation from engaging in legislative advocacy unless requested by a legislative body to do so or "in connection with legislation or appropriations directly affecting the activities of the Corporation." These functions—litigation and legislative advocacy designed to advance the interests of particular clients—may not be performed by the Corporation; they must be performed by grantees or contractors. Taking this as so, there remains the question whether a grantee-program funded to do such specialized litigation could be funded also to perform research or training or technical assistance or clearinghouse functions. I personally believe that the Act does authorize the Corporation to make such grants or contracts, at least in some circumstances. But I recognize, as we all must, that there are those who argue that the Act would prohibit the specialized litigators from doing any "research" or any "training." Indeed, there are some who have gone so far as to argue that the Corporation is without authority to fund by grant or contract even the litigation functions of national or regional institutions.

The last argument is very hard to credit, since it would leave us with a national legal services program that could not litigate either in-house or by grant or contract—except perhaps exclusively through the local programs (although no reason appears why litigation should be treated differently at that level). What is important here, however, is not whether these arguments are meritorious, but that they are made. If the ambiguities in this statute remain, the new Legal Services Corporation will have to spend much of its time and money debating—within the Corporation and its Board and, most likely, in court—what the funding authority of the Corporation is. The ambiguities can and should be removed by adoption of this simple, corrective legislation, which would restore the language of the 1974 Conference Committee report. Adoption of H.R. 7005 would not mandate the funding of specialized centers to perform litigation or research or training or any other functions. The questions whether and to what extent and in what manner these functions should be performed would be left to the Legal Services Corporation. What this legislation would do is to remove any doubt that the Corporation has the discretion to provide those services to the extent and in the manner that the Corporation deems efficient, appropriate and wise. The members of the Corporation Board who have been appointed by President Ford and confirmed by the Senate are responsible persons who have evidenced a genuine concern to carry out the will of Congress and foster a professional, effective legal services program. H.R. 7005 would free them to act in their sound discretion without becoming involved in time-consuming, expensive, acrimonious debates and litigation. For these reasons, we strongly urge the prompt passage of H.R. 7005.

THE DISTRICT OF COLUMBIA BAR,
Washington, D.C., August 1, 1975.

HON. ROBERT W. KASTENMEIER,
U.S. House of Representatives, Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: The District of Columbia Bar commends your sponsorship of H.R. 7005: it adopted the following resolution at the July 10, 1975 meeting of the Board of Governors:

Resolved, that the D.C. Bar strongly supports H.R. 7005, which explicitly would afford the Legal Services Corporation Board the authority to select the most effective manner of providing research, clearinghouse, training and technical assistance services, and further

Resolved, that the president of the Bar testify in support of this legislation at the hearing scheduled for July 28, 1975.

The District of Columbia Bar is concerned about the possible elimination of independent research and other backup functions under the Legal Services Corporation Act. That elimination occurred without the benefit of any hearings or other studies on the merits of national backup centers. By contrast, H.R. 7005 would permit the Corporation to conduct a thorough evaluation of the purpose, method of operation and performance of each backup facility. The record of backup centers thus far indicates significant successes.

Backup centers were conceived as a mechanism for providing technical assistance to local legal services programs on a problem-by-problem basis or in highly complex or technical cases where local resources were insufficient to handle a particular case or portion thereof. Access of legal services attorneys working in the field to such backup assistance is important for a variety of reasons. These have perhaps been obscured by the involvement of some backup centers in cases which, while in some instances controversial, nevertheless have resulted in great benefit to clients. Given the rapid turnover of lawyers in the legal services program and the fact that many of them have had little or no prior practice experience, they are particularly dependent upon the technical assistance, training and support that backup centers provide.

Furthermore, poverty law is itself a new and rapidly changing field that requires constant attention to changing government regulations and developments in the case law. Chronic problem areas of poverty law such as consumer protection, welfare, social security, employment, economic development, education and health are governed by an increasingly complex system of federal and state statutes and regulations that have special impact on the poor. The backup capability, then, is designed both to provide the attorneys in the field with a ready source of information in an area where they would otherwise lack expertise, and insure that the general office caseload, traditionally very heavy, does not suffer by virtue of heavy expenditures of time and resources on one client's problem.

In private practice, lawyers specialize and acquire the expertise and experience necessary to provide quality legal counsel to clients. For the poor, whose legal dilemmas are frequently at a critical stage when they finally do seek legal counsel, it is no less important that representation be of the same highly specialized standard as that expected by a paying client.

Clearly the many backup functions now performed by independent centers cannot be performed effectively "in house" within the Corporation, particularly since the Corporation is prohibited from engaging in litigation. Subjecting such centers to constraints in Washington would run contrary to the Act's objective of insulating legal services from political pressures and personalities. We think that it is in the best interest of the program not to limit or compromise the full access to the courts which independent backup centers can provide. Certainly the Corporation ought to have the discretion, which H.R. 7005 would afford it, to provide backup services "by grant or contract."

We do commend your sponsorship of this Bill. When hearings are scheduled, I hope that I may testify on behalf of the Bar.

Sincerely yours,

DANIEL A. REZNECK,
President.

Mr. KASTENMEIER. In addition, I wish to submit the following other documents generally in support of the bill. One, the Los Angeles Times editorial of September 15, 1975.

Two, the July 1975 letter of Mr. Brent Abel, the then president of the State Bar of California, including the June 19 resolution of that bar, and the October 28, 1975 telegram of Mr. David S. Casey, the new president of the California Bar.

Three, the letter of Mr. Cyrus Vance, president of the bar of the city of New York.

Four, a letter from Mr. Henry Hewitt, chairman of the Committee on Legal Aid, Oregon State Bar.

Five, letter of Mr. Evans Jones, chairman of the Boston, Massachusetts Bar Association Committee on Legal Services to the Indigent.

Six, letter and resolution of the Chicago Council of Lawyers.
 And seven, letters from local legal services projects, indicating in their view the need for H.R. 7005.
 [The documents referred to follow:]

[From the Los Angeles Times, Sept. 15, 1975]

LIFE FOR LEGAL SERVICES

The independent Legal Services Corp. begins its official life Oct. 13. But there are a couple of things Congress must do to assure the effectiveness of the program.

Since the program began, as part of President Johnson's war on poverty, it has been controversial. The program survived because its premise—providing every citizen with equal justice under the law—is basic in a democratic society.

President Nixon proposed in 1971 that legal services be established as an independent corporation. The idea, excellent on its face, was to remove the program from politics. In a most unfortunate irony, the legislation was watered down, a victim of impeachment policies in the last days of the Nixon administration.

That, briefly, is the history. For the present and the future, two important issues affecting the corporation are now before Congress.

One is an appropriation. If the program is to live up to its mandate, it needs money. Legal services have been funded at the same level, \$71.5 million, since 1971. The program has not expanded, and in some instances has been cut back.

The corporation board, correctly, has given priority to increasing the budget. Congress has been asked to provide \$96.5 million, a modest increase that reflects inflation and the new costs of running the corporation. The appropriation should be approved.

A more troublesome issue is a restrictive section in the legal services law. It prohibits the corporation from awarding grants or contracts to groups providing research, training, technical assistance or information that aids the delivery of legal services.

These groups are known as backup centers. There are 18 of them across the nation, some affiliated with law schools. They provide highly specialized services in specific areas of poverty law—health, housing, consumers, employment, juveniles, to name a few.

Many local legal service offices have small staffs, and they have enormous caseloads. The backup centers are an invaluable resource for them. We believe that the overall program would suffer if the centers were put out of business.

The Community Services Administration, responsible for legal services until the corporation takes over, has funded the backup centers through next March. The corporation is studying the issue. Last week the board said a decision could be reached by June.

That is an argument for extending the funding through June. Once that is done, it would be prudent to remove the restriction. Rep. Robert W. Kastenmeier (D-Wis.) has introduced legislation, HR 7005, that would do just that. The bill is supported by the California Bar.

The legislation would not require the new corporation to continue each center. But it would give the board the flexibility and the time to make an intelligent decision on the use and usefulness of the centers. The bill should be approved.

THE STATE BAR OF CALIFORNIA,
 San Francisco, Calif., July 21, 1975.

HON. ROBERT W. KASTENMEIER,
 House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: Our Board of Governors recently has been alerted to your bill, H.R. 7005, which would amend the Legal Services Corporation Act of 1974 to allow the funding of independent "back-up centers." As expressed in the enclosed resolution, we heartily endorse the bill—or any similar amendment that would remove the Act's present restriction against the continued funding of these centers.

You are no doubt keenly aware that attorneys providing legal services to the poor through local programs in California and throughout the country depend

considerably upon the research, training, technical assistance and clearinghouse services provided by the back-up centers regarding the more complex and specialized areas of poverty law. This is particularly so now when the local programs' own limited resources are being severely strained under the pressure of general inflationary costs.

While we would welcome the expansion of such back-up assistance by the Corporation on an "in-house" basis, we believe that to discard the capabilities of the independent centers built up over several years would deprive the Corporation of a vital resource and seriously set back legal services to the poor. We therefore agree with the philosophy of your amendment that the Corporation's Board of Directors must have the option of providing back-up assistance through independent agencies on a direct funding or contract basis—thus giving the Board authority to continue utilizing the present centers where it determines that they offer the most effective means of providing needed assistance.

Very truly yours,

BRENT M. ABEL,
President.

RESOLUTION ADOPTED BY THE BOARD OF GOVERNORS OF THE STATE BAR OF
CALIFORNIA ON JUNE 19, 1975

Whereas, the Congress of the United States adopted and the President signed the Legal Services Corporation Act of 1974; and

Whereas, the Legal Services Corporation Act of 1974 provides that the Corporation is authorized to undertake directly "but not by grant or contract" . . . "research, training and technical assistance", or "to serve as a clearing-house for information"; and

Whereas, there are now 17 back-up centers which provide for research, training, technical assistance and clearinghouse services throughout the country and which are funded by grant or contract; and

Whereas, under the restrictions of the Legal Services Corporation Act of 1974, these back-up centers could not continue to be funded by grant or contract; and

Whereas, the back-up centers presently provide specialized assistance to more than 300 local legal services programs throughout the country in the complex and technical area where special expertise is needed to assist local legal services attorneys; and

Whereas, the local legal services attorneys depend upon the technical assistance, training and support that back-up centers provide; Now, therefore, it is

Resolved, that the Board of Governors of the State Bar of California hereby endorses H.R. 7005 or any similar legislation introduced in the Congress of the United States which would remove from the Legal Services Corporation Act of 1974 the restriction on the funding of independent back-up centers by the Legal Services Corporation by grant or by contract; and it is further

Resolved, that said endorsement be communicated to the members of the House of Representatives Judiciary Committee and to all California members of Congress.

[Telegram]

SAN FRANCISCO, CALIF., October 28, 1975.

HON. ROBERT W. KASTENMEIER,
Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: on July 25, my predecessor, Brent M. Abel, wrote you to advise of our bar's support of H.R. 7005 which would authorize the new Legal Services Corporation to continue funding independent backup centers. While I regretfully cannot attend tomorrow's hearing on this bill, I want to assure you of our continued strong support.

We are most concerned that the corporation have every possible resource at its disposal to improve and expand the delivery of legal services to the poor of this country. In our view, this must include the special capabilities of existing back-up centers which have been built up over recent years. We therefore feel that the adoption of H.R. 7005 is imperative in order that the corporation be authorized to continue funding these centers as and how it sees fit.

Sincerely yours,

DAVID S. CASEY,
President, State Bar California.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

New York, October 1, 1975.

HON. ROBERT KASTENMEIER,
Rayburn Office Building,
First and South Capitol Streets,
Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: The Association of the Bar of the City of New York has vigorously supported a strong, independent, and fully professional program of legal services to the poor. We understand that your Subcommittee on Courts, Civil Liberties, and the Administration of Justice has taken responsibility for oversight of the new Legal Services Corporation, and we want to extend to you our congratulations on your assumption of this new major responsibility. We hope that you and your staff will feel free to call upon the Association for assistance or suggestions as your work in this area progresses.

During the course of Congressional consideration of the Legal Services Corporation Act, our Association, together with other major bar associations and legal services organizations in this State, submitted a number of comments on the legislation which I am enclosing for your information. You will notice that among the matters we discussed was the need for authority in the Corporation to allocate its resources in the manner that would assure the most effective and professional services to the poor and that the elimination of authority to fund independent "back-up centers" by grant or contract was specifically criticized. We therefore are most gratified that your Committee has chosen as its first formal action the introduction of H.R. 7005 which restores that authority.

Two of the major back-up centers, the Center on Social Welfare Policy and Law and the National Employment Law Project, are located in New York City. Over the years these programs have provided much needed expert litigation assistance to local programs. The importance of this type of work was attested to by Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York in testimony before the House Subcommittee on Equal Opportunities of the Committee on Education and Labor two years ago, when he described a major case handled by one of these centers.

"This lawsuit, *Rosado v. Wyman*, raised a legal claim on behalf of a million poor people in the State of New York, the claim which was ultimately upheld by the United States Supreme Court. The case gave rise to major substantive and procedural issues, issues which had to be resolved in a short amount of time, owing to the serious injury that the plaintiffs were suffering. The counsel that appeared for the plaintiffs, attorneys from the Center on Social Welfare Policy and Law here in this City, produced the type of work that one usually associates with the largest and most respected law firms in the private sector—extensive briefing, plus oral argument and the presentation of evidentiary data and live witnesses, respecting complex issues in a specialized field, and all done within a very rigid time schedule."

Obviously, if work of this calibre and importance can be provided by independent grantees, the Corporation should have authority to fund such programs if it wishes. I hope that you will be successful in securing enactment of H.R. 7005 to assure the Corporation this flexibility.

Continued funding of back-up centers pending passage of your legislation and deliberation by the Board of Directors of the Legal Services Corporation formally indicated at its September meeting that it needs until June 1976 to complete its study of the back-up centers and their functions and to determine how to proceed. Unfortunately, funding for such period must probably be provided by the Community Services Administration before its authority expires on October 12, 1975, and Bert Gallegos, the Director of the Community Services Administration, has agreed only to extend funding to March. I understand that you have met with Mr. Gallegos to urge him to provide adequate funding. Since decisions to maintain, modify, or dissolve the back-up centers in New York City and elsewhere should be made on the basis of sound professional judgment about the best interests of the legal services program and should not result from gaps in funding or funding authority, I am most hopeful that your efforts will be successful.

Sincerely,

CYRUS VANCE,
President.

PORTLAND, OREG. September 19, 1975.

Re House Resolution 7005.

HON. ROBERT W. KASTENMEIER,

*Chairman, Subcommittee on Courts, Civil Liberties and Administration of Justice,
House Judiciary, Rayburn House Office Building, Washington, D.C.*

DEAR CHAIRMAN KASTENMEIER: I am writing to you as Chairman of the Committee on Legal Aid of the Oregon State Bar. At a meeting held on September 18, 1975, the Committee, with one dissenting vote, voted to support adoption of House Resolution 7005 which would permit the National Legal Services Corporation to undertake, either directly or by grant, research, training and technical assistance, and clearing house functions.

We feel that such activities are essential if legal aid programs are to discharge their responsibilities in the most effective and efficient manner and would urge favorable action on House Resolution 7005 at the earliest possible time.

Very truly yours,

HENRY H. HEWITT,

*Chairman, Committee on Legal Aid,
Oregon State Bar.*

BOSTON, MASS., October 29, 1975.

HON. ROBERT W. KASTENMEIER,

U.S. House of Representatives, Chairman of the Committee on Courts, Civil Liberties and Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: I am writing as Chairman of the Boston Bar Association's Committee on Legal Services to the Indigent to express the Committee's strong endorsement of H.R. 7005. The Committee is comprised of representatives of the private bar, government and various public interest organizations who share a common interest in reviewing developments affecting the provision of legal services to the poor.

H.R. 7005 provides the Legal Services Corporation with the authority to provide research and technical assistance centers by grant or contract. Presently, there are approximately eighteen such back-up centers which provide research, training and technical assistance. We are familiar with the laudable efforts and activities of several of these centers which are located in the Boston area. These centers and their counterparts in other regions provide expertise in such areas as housing, welfare, employment, education, social security and consumer law and are of great assistance to legal services programs throughout the country.

We believe it is essential that the corporation have the opportunity to provide research, training and technical assistance and information distribution by grant or contract to back up centers as the corporation may deem necessary in its continuing efforts to best meet the legal needs of the poor.

Very truly yours,

EVAN JONES,

*Chairman, Boston Bar Association's
Committee on Legal Services to the Indigent.*

CHICAGO COUNCIL OF LAWYERS,
Chicago, Ill., October 28, 1975.

Re: H.R. 7005

HON. ROBERT W. KASTENMEIER,

Chairman, Subcommittee on Courts, Civil Liberties, and Administration of Justice Committee on the Judiciary, House of Representatives, Rayburn House Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: The Chicago Council of Lawyers strongly urges passage of H.R. 7005 which would amend Section 1006(a) (3) of the Legal Services Corporation Act to authorize the Corporation to obtain by grant or contract so-called "back-up" services such as research, training, technical assistance and clearing house functions.

Our experience with the legal services programs in Chicago indicates that these "back-up" activities provide invaluable expertise to local attorneys in providing effective legal services to the poor. We believe that the present "back-up"

centers, specializing in such crucial areas as employment law, health law, housing law and welfare law, are working well, and it is vital that they be able to continue without interruption.

Unless the proposed amendment is adopted, there will, at a minimum, be uncertainty and possibly litigation over the continuation of present operations. The Corporation will be under undesirable pressure and may be denied the flexibility to continue present operations while studying which functions are best performed in-house and which by grant or contract.

The amendment would restore to the Act the original intent of Congress as agreed to by the Conference Committee, before the Nixon administration's threat to veto the entire bill forced inclusion of the restrictive Green amendment. We believe the original Congressional intent was correct and that failure of Congress to act now may impair the viability of programs in this area.

We strongly urge the Committee to recommend passage of H.R. 7005.

Sincerely,

JOHN R. SCHMIDT,
President.

STANISLAUS COUNTY LEGAL ASSISTANCE, INC.,
Modesto, Calif., September 4, 1975.

HON. ROBERT W. KASTENMEIER,
*House of Representatives,
Washington, D.C.*

DEAR REPRESENTATIVE KASTENMEIER: On August 13, 1975, the Board of Directors of Stanislaus County Legal Assistance, Inc., voted unanimously to concur with the California State Bar Association's Resolution endorsing your bill, H.R. 7005, which would amend the Legal Services Corporation Act of 1974 to allow the funding of independent "back-up centers."

Our Board of Directors feels that the research, training, and technical assistance provided by the back-up centers to programs such as ours is quite invaluable, and that their demise would truly be a setback to legal services for the poor.

Very truly yours,

DUANE L. NELSON,
Chairman, Board of Directors.

MEMPHIS & SHELBY COUNTY,
LEGAL SERVICES ASSOCIATION,
Memphis, Tenn., October 22, 1975.

HON. ROBERT W. KASTENMEIER,
*U.S. House of Representatives, Rayburn House Office Building,
Washington, D.C.*

DEAR CONGRESSMAN KASTENMEIER: I am writing as an individual attorney who has worked with legal services for a year. I have had most of my practice in the State of Washington with Northwest Washington Legal Services. I worked in both the Everett and Bellingham offices.

When I joined legal services, first as a VISTA attorney and then as a staff attorney, I had no previous experience as an attorney. As I learned how to handle the problems of legal services clients, I needed more assistance than the other attorneys in the office could provide. Both Everett and Bellingham had sufficient county law libraries for most problems. However, for more complex and new litigation, I needed another source of information.

While I handled a general caseload, my main concentration was in the area of consumer problems. I started contacting the National Consumer Law Center for assistance with my clients' problems. I found their help always prompt, thorough and extremely helpful. It provided my clients with developments of the law and strategy that they would not have had if I had not had NCLC's assistance.

Sometimes it prevented my client from filing a claim that they could not recover because of additional information. Other times I discovered through NCLC that my client did indeed have a defense or claim of which I did not know.

I wish to state my support for your Bill, H.R. 7005, allowing the Legal Services Corporation to fund desirable back-up centers. I know from my experience that

the assistance provided has been invaluable. I hope this Bill is passed and that the back-up centers will be refunded.

I thank you for your sponsorship of this Bill.

Respectfully yours,

RICHARD BAUM,
Staff Attorney.

SALT LAKE COUNTY BAR LEGAL SERVICES,
Salt Lake City, Utah, August 22, 1975.

Re H.R. 7005

HON. ALLAN T. HOWE,
U.S. Representative, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HOWE: There is presently pending before Congress H.R. 7005 which would remove from the Legal Services Corporation Act of 1974 the restriction on the funding of independent back-up centers by the Legal Services Corporation by grant or by contract. The centers now provide for research, training, technical assistance and clearing-house services throughout the country for Legal Services projects. Back-up centers presently provide specialized assistance to this office in the complex and technical areas where special expertise is needed to assist our staff attorneys.

I would very much appreciate your support of H.R. 7005 or any similar legislation to maintain the independence of the research centers and remove further restrictions against their continued funding. Without their help we would not be able to do some areas of this offices' work, given our limited funding and increasing case load.

Your cooperation and assistance would be sincerely appreciated.

Respectfully,

E. BARNEY GESAS,
Acting Director.

MR. KASTENMEIER. At this time, as our opening witness this morning, I would like to greet Mr. Arthur West. Mr. West you are most welcome. We have your statement, and you proceed as you wish. It is a short statement, actually, so feel free to read it.

TESTIMONY OF ARTHUR H. WEST, PRESIDENT, NEW JERSEY FARM BUREAU; REPRESENTATIVE, AMERICAN FARM BUREAU

MR. WEST. Yes, sir. I tried to stay within your 10-minute time limit.

Thank you, Mr. Chairman. Mr. Chairman, members of the committee, my name is Arthur H. West. I own and operate a farm in my home community of Allentown, N.J. I am president of the New Jersey Farm Bureau and appear today to speak on behalf of the American Farm Bureau Federation, a nonprofit, voluntary association representing more than 2½ million families in 49 States and Puerto Rico.

At the most recent annual meeting of the voting delegates of the member State Farm Bureaus, the following policy was adopted regarding the Legal Services Corporation:

The establishment of a National Legal Services Corporation provides an opportunity for a fresh start in the policy as well as the mechanics of providing legal services and access to our courts for those in need. Agriculture should attempt to keep the Corporation informed of its views upon this subject. The appointment of Directors of the Corporation and the appointment on the state level of advisory councils should be made with recognition of agriculture's importance.

The directors of the Corporation should be encouraged to implement legislation by carefully constructing rules and regulations imposing a high degree of responsibility upon employees of the Corporation to insure that the Corporation and its employees do not become a vehicle for social engineering and experimentation.

We are dismayed that this committee is at this time giving consideration to a bill of this nature. It has been only a few months since the new law was enacted, after many years of controversy over the operation of its predecessor program under the Office of Economic Opportunity. This bill, if enacted into law, would reopen an important and controversial issue; namely, the future of relationship of the so-called backup centers to the new legal services program.

This issue was brought into sharp focus on the floor of the House of Representatives on June 21, 1973, with the adoption of an amendment to the bill offered by Congresswoman Edith Green, a Democrat from Oregon, which amended subsection (3) of section 1006(a) of the bill to add the words "and not by grant or contract." The lengthy debate on the floor that day made it abundantly clear that the purpose of the amendment was to prohibit the new corporation from undertaking research, training, and technical assistance, and an information clearinghouse through grants or contracts, thus ruling out the purchase of such services from the 17 backup centers located mostly at various institutions of higher learning. The amendment was adopted by a generous margin of 245-166. While it was later dropped by the conferees of the House and Senate, it was subsequently reinstated when the President made it clear that he would not sign the bill without such a provision.

The agricultural community does not question the principle that every citizen, regardless of his economic situation, should have full access to the courts through competent legal representation. How best to assure such access and representation is another matter. From the beginning, we have been somewhat skeptical about the creation of a public corporation as the means of delivering legal services to the poor. That skepticism remains today; however, we are willing to give the new program an opportunity to prove itself. In our opinion, the passage of this bill would create widespread public controversy and would thus severely hamper the new Corporation in its trial period of the next 2 years. The act provides that the Corporation conduct a study within 2 years to determine whether there is a better way of providing legal services to the poor.

The controversy surrounding the OEO legal services program is well known. The abuses of that program have been the subject of widespread public debate over a period of several years. The actions of those in the program to achieve social reform or change, in the advocacy of political and social causes, in broad areas of law reform through class action suits, and in other areas of social engineering are still fresh in our minds.

We believe that the engine of this social and political engineering, financed by the public in the name of legal service for the poor, has been the backup centers. As Congresswoman Green said on the floor of the House on June 21, 1973, "These centers have become the cutting edge for social change in this country." It is also interesting to note that on the same day, Congressman Gerald Ford of Michigan spoke in favor of the amendment offered by Mrs. Green and voted for it.

In New Jersey, where I have had personal experience with the operation of the legal services program under OEO, we have known what it is to have personnel of this publicly financed program working hand in hand with efforts to organize farmworkers and in filing

harassment suits of little or no merit in New Jersey and in many locations in Puerto Rico, aimed at wrecking a pioneering and model contract farm labor program, under which a nonprofit association has for some 28 years negotiated an annual agreement with the government of Puerto Rico.

We have witnessed the actions of the OEO attorneys who were not satisfied with receiving complaints of low-income people and taking appropriate action; instead, they went out into the fields to round up business and to use clients as a means of achieving some social or political goal or law reform desired by the attorneys and law students in the backup centers.

Most of these suits have turned out to have no merit. In some cases, the workers involved have failed to appear in court. But all have required extensive legal services for which farmers have had to pay, while the other side has enjoyed virtually unlimited public funds—a portion of which came from these same farmers.

The suits filed by Legal Services require no filing fees or court costs of any kind, which in itself invited unnecessary litigation.

The 1975 work agreement negotiated by our association with the government of Puerto Rico includes a grievance procedure that includes procedures on filing of complaints, but at least three suits have been filed this year by Legal Services ignoring the grievance procedure in the agreement.

Most of the complaints involved could have been settled amicably without resort to court action, had there been a different attitude on the part of the legal services attorneys. It has been obvious that many of the attorneys have been far more interested in fighting the system of the establishment, operating as an advocacy movement for workers and against employers, than they have in solving the legal problems of individual farmworkers. In our opinion, this overall stance and attitude in the OEO legal services program has emanated largely from the backup centers.

We recommend that this bill be rejected by this committee. If it is enacted, it will inevitably reawaken widespread opposition to the program and move it into needless controversy. Instead, the corporation should proceed with the full knowledge that the Congress has prohibited it from contracting with the backup centers for research, training, technical assistance, and an information clearinghouse. Instead, the corporation should employ its own personnel to provide whatever services of this nature are needed. It is only in this way that the corporation's board of directors can be sure of having complete control over the general policies and operation of the program.

If the Congress wants to give the new corporation a chance to prove itself, the present law should be left alone. That concludes my statement.

Mr. KASTENMEIER. Thank you, Mr. West.

You indicate that you are skeptical about the Legal Services Corporation. Why are you skeptical?

Mr. WEST. Well, I have had very close personal experiences with their operations in New Jersey. As I mentioned, in our contract program, which has been a model program for 28 years between an association, nonprofit association, and the Department of Labor of the Government of Puerto Rico, we have had, in the last 3 years, 66 suits

brought against us—65 suits. I am sorry—65 suits have been brought against our association. As of this date, 25 of these cases have been dismissed by the courts in Puerto Rico because they have had no basis whatsoever, were falsely filed, what have you, and in instances, because rural legal services attorneys and the plaintiff didn't even show up in the court on the trial date, didn't have the courtesy to notify the judge, or what have you, so the cases were dismissed. Two of the cases were settled with a cash payment which we admit was a clerical error on our part, and this was a cash settlement in both cases, less than \$100. One of them I believe was \$26 or \$23. The other was 50-some dollars. And in these cases, had we had the courtesy of receiving a letter from the rural legal services attorney prior to filing suits, we would have rechecked our records and certainly would have made the payments because we have had a history of doing this for many, many years.

We have had two of the cases that have been heard and are awaiting decision from the judge in Puerto Rico. There are yet some 36 cases to come to trial, which accounts for the total of 65 cases. There were two additional cases filed in small claims courts in Puerto Rico, and they have been heard but a decision has not been rendered as of this time.

Because of this experience I have had with these people, and knowing the type of suits that are involved, and I do have letters in my files back in the office from workers who have claimed in writing and signed these statements that they never authorized anyone from Rural Legal Services to act as attorneys in their behalf, they were sought out and were told various things by Rural Legal Services attorneys that would happen if they would sign a certain paper. Some of them—one of them has even sworn he even signed a blank paper and the affidavit was typed in afterwards.

These are the reasons I am skeptical, sir.

Mr. KASTENMEIER. The Department in these suits, I take it, is not the New Jersey Farm Bureau, is it?

Mr. WEST. No, sir. I must explain a little bit the structure so that you can understand. I hope it doesn't take but a couple of seconds. But the corporation I am talking about generally is the Garden State Services Cooperative Association. This is an association—we now have eight members, eight other cooperatives. Two of the largest are in New Jersey—Glasboro Labor Service and the Farmers and Guardian Corp. in Keyport. The other members of this Garden State Cooperative are in New York, Delaware, and Pennsylvania. And we—and I say we, because I also happen to be the president of the Garden State Service Cooperative, and of course the Glasboro Labor Service is an affiliate of the New Jersey Farm Bureau. The Garden State group has negotiated the contract for these other cooperatives for these 28 years with the Government. It is a written contract. Each worker received a contract. He signs his contract. He is oriented before he signs on the job in Puerto Rico.

We transport them to New Jersey and they are assigned to certain farms that are members of the Association and we check all payroll records of every farmer employer where these people are assigned, and we have a history that can be substantiated through the Department of Labor in Puerto Rico for this 28-year period of time that every worker's account, payroll account, is audited by our clerical force at

the end of the year and if there have been errors, the checks are forwarded to the workers and if the workers cannot be located, they are forwarded to the Department of Labor in Puerto Rico and they try to find the workers or they are held in an escrow account until such time as they can locate the workers.

So, I think we have an open operation for all these years, and we have never been criticized of any wrongdoing in all these years, and I am certain that there are errors committed when you deal with from 3,000 to 5,000 workers. There are going to be some clerical errors on somebody's part, but certainly it is not the intention of there being these errors and they are found and corrected.

Mr. KASTENMEIER. Then your opposition to the legislation arises out of one or more New Jersey Cooperatives, that is the farmer operatives' dealing with migratory labor.

Mr. WEST. Primarily Glasboro Labor Service, and you asked who the defendants were. There are generally four defendants on all these and you can take these suits and they are nothing but a carbon copy of the previous one. There is no question about it. It is the Garden State Service Cooperative as a defendant, the Glasboro Labor Association as a defendant, the individual farmer on whose farm the farmer worked as a defendant, and the Puerto Rican-American Insurance Co. who holds our fidelity bond for doing business in Puerto Rico who is a defendant and this is a pattern in each of the cases.

Mr. KASTENMEIER. Let me ask you this, Mr. West. What specific cases do you have, or do you know of, in which a backup center has been involved and how have they operated or acted improperly, because that is what we are talking about?

Mr. WEST. I understand that, sir.

Mr. KASTENMEIER. Not legal services.

Mr. WEST. I understand that, sir. There is no question but what law students have been out stirring up controversy and trying to find clients for legal services in New Jersey. It is open. It is done daily throughout the summer. The Farm Workers Corp. is another OEO funded group, or was an OEO funded group and these people are riding in the same cars with rural legal services on a daily basis and going in and out of the same farms and looking for these types of problems of any kind, and this is the reason that I know that these backup centers are a lot of the problem.

Mr. KASTENMEIER. Well, I still don't understand what is the connection. What backup center is causing foment among workers in New Jersey?

Mr. WEST. Well, sir, it is an attempt, without any question, of the backup center, the Farm Worker Corp. in New Jersey, and the Camden Regional Legal Services operation in New Jersey. There is no question but what their whole mode of operation is to organize farm workers into a union. Now, they have said this openly before other witnesses, that I could certainly bring before any committee or anywhere else under subpoena. Without any question, this can be done. This is the whole reason for these suits to stop the operation of a 28-year program that has not cost the farm worker, that has been supervised by both the U.S. Department of Labor and the Puerto Rican Department of Labor, with the cooperation of the New Jersey Department of Labor, to make sure that the contract terms have been agreed to.

Mr. KASTENMEIER. It would seem to me, Mr. West, the quarrel is really with the Legal Services Corporation or even more precisely, with its predecessor, OEO Legal Services.

Mr. WEST. But knowing that they do not have nearly enough manpower to generate this number of suits, and knowing that the backup centers are substantially helping in this operation.

Mr. KASTENMEIER. On Wednesday, I believe it is correct to say that the Chairman of the Board, Dean Crampton, suggested that if it were concluded that after March 31, 1976, that the Corporation did not have authority to fund through its own resources backup centers, that it might be put in position of having to incorporate these backup centers to hire personnel as their own Legal Services Corporation personnel. If that came about, how would you be any better off if they were just sort of Federalized, rather than a grantee of the Corporation?

Mr. WEST. If that were done, in my opinion, at least, the Board of Directors, the new Board of Directors of the Corporation, would have control over what is done and how it is done and I would certainly feel confident that the Board of Directors would demand that these programs be operated under ethical practices, and I don't really believe they are today.

Mr. KASTENMEIER. Now, of course, the contracts or grants would have to be authorized by the Board and they are presently evaluating them right now, as a matter of fact, and presumably would continue to do and would determine whether the given backup centers or given grants could be continued or ought to, as a matter of policy. So, I would think in either event, the Corporation maintains the full authority and control over what is done in its name.

Mr. WEST. Well, theoretically, they may, but in practicality, they do not.

Mr. KASTENMEIER. I yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I don't have many questions. What is the general nature of the allegations against the cooperative, and are they repeated in each of the suits?

Mr. WEST. I don't have the complete breakdown with me. Approximately 33, or 34 of the suits are identical, with the exception of the plaintiff's name and the defendant farmer's name, the only differences. And what they are suing us for in each of these 33 or 34 suits is for time and a half wages for over 40 hours of work and double time for over 48 hours of work, which is not the law in New Jersey. Farm workers are exempt from overtime in New Jersey. It is not an agreement in the contract, never has been. There is no mention of it in New Jersey.

Now, I believe, and I don't know, but I believe that their reasons for doing this is that there is a law in Puerto Rico that farm workers or all workers, for that matter, get time and a half for over 40 hours and double time for over 48 hours. But, these people are not working in Puerto Rico. They are working in New Jersey. Now, this is 33 or 34 of the suits. The other cases are a variety of situations. Most of them are charging that a worker did not receive his full pay and in all of these cases—nearly all of these cases it is because a worker left a farm on his own without telling anyone he was leaving between pay periods, and it is a matter that the pay has not caught up to him yet. If a pay

period ends on a Friday night and a worker leaves on Tuesday and he has worked Monday and Tuesday and he left in the middle of the night or on his own, just walked off, naturally he wasn't paid. He didn't tell anybody he was leaving. But, that will be corrected by the time the next pay period comes around. The farmer can't pay him when he has to, under our agreement, turn that money into our association, and we attempt to find the worker to pay him that money. If we cannot locate him, as I say, after a period of time specified in the contract, the money goes to the Department of Labor in Puerto Rico and they attempt to locate him. If they can't locate him, it is held in an escrow account, as I say, for such time as they can locate him.

That is how, it is operated, and this is what the suits are about, and I don't know how we can pay somebody that isn't there to pay, and when you don't know he is leaving.

Mr. RAILSBACK. Is there a particular backup center involved, or do you know?

Mr. WEST. I think the Farm Workers Corp. is the backup center that is being used in New Jersey to the greatest extent, plus Rutgers, I think—I don't know whether this is an official backup center—Rutgers Law School certainly has many of their students that are assisting these people all summer. Whether it is done voluntarily or through a contract, I don't know.

Mr. DRINAN. Would the gentleman yield?

Mr. RAILSBACK. Yes.

Mr. DRINAN. That is not a backup center that is federally funded by this organization. There is no backup center in New Jersey.

Mr. WEST. Well, these are two people that are helping them, I can assure you of that.

Mr. DRINAN. But that is not federally funded from the Legal Services Corp.

I yield back to the gentleman from Illinois.

Mr. RAILSBACK. Well, that is really my concern. There are about, I think, 16 or 17 maybe official grantee backup centers, and I am just, you know, I am not sure that there is one involved in your problem or I would be interested to know the name of the one that is involved.

Mr. WEST. Well, these are the two that are supporting the Camden regional legal services. I don't know who is supporting the Puerto Rican legal services where I say 65 suits have come from that group. We had six cases filed before these in New Jersey by the Camden regional legal services, and after the courts heard them, the judge there issued an order stating that these people, the rural legal services, could not file any more suits in New Jersey until they had exhausted the procedures that he prescribed in a memorandum of understanding as to how they had to handle their complaints. Since that time, no suits have been filed in New Jersey.

Mr. RAILSBACK. Perhaps it would help if attorneys fees would be awarded to the defendants if they—in the event the claimants are unsuccessful. We are considering that question separately.

Mr. WEST. Well, you had better have a big bank account, because we are about to go broke from the defendant's attorneys fees, believe me, and I am not being facetious at all. We have tried voluntarily to give farmworkers a good program, and I think you can check the records, and it is a model program, recognized by nearly everyone as having

been such a model program, and believe me, it is about to go bankrupt because of the severe costs of defending ourselves, and we won the suits.

You know, had we been guilty of some wrongdoing, sure, I could see a reason for it, but, you know, the record is pretty good, thus far.

Now, we have got a long way to go and they are continually filing, and as I said in my statement, recognizing that these suits were filed in the 1975 work agreement, a grievance procedure was spelled out in the contract that if a worker was not satisfied, he could do this, this, and this, and he had a period of time to do this, and the Puerto Rico Department of Labor would do this investigatory work for him, again free of charge.

Even with this, the Puerto Rico regional legal services have filed three suits without even attempting to follow the procedure as prescribed in the contract.

Now, I am not an attorney. You people may be. Most of you probably are. But, I am reasonably sure when that case comes to trial, because they haven't exhausted the contract agreement, that will probably also be dismissed. At least, we feel it will be. But, this seems like a tremendous waste of a whole lot of money here when this could all be resolved with a simple 10-cent stamp and a letter, if there is a legitimate complaint, and that is about all it would take.

Mr. RAILSBACK. That is all.

Mr. KASTENMEIER. Before I yield to the gentleman from Massachusetts, I would just like to observe I really don't think that your well-expressed reservations go to the existence or authorization for backup centers, but whether the suits are necessary or are frivolous. Incidentally, this committee is interested in that allegation in terms of whether the Legal Services Corp., through its guidelines and through its association with at least the two local legal services groups, which are not backup centers but are legal services groups in New Jersey, are in fact, frivolously or inappropriately pursuing certain litigation.

Now, we cannot answer that, but it seems to me that you have raised that question here.

Mr. WEST. Well, if they can raise this number of what we call faulty suits without backup centers, God forbid what they could do with them.

Mr. KASTENMEIER. As I say, I don't think the backup centers are central to the problem.

I yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

I tend to agree with the chairman that I think you are blaming the backup centers for what you consider to be harassment. At the same time, toward the conclusion of your statement you say this, that the corporation should employ its own personnel to provide whatever services of this nature are needed. And you seem to grant or concede that such services are needed.

I think we ought to go back and find out what these things are, since these backup centers are necessary because of the turnover of lawyers in the legal services program, and these centers received an enormous number of requests last year, 19,500 to be exact, and they are the backup centers for 1,900 local offices employing 2,600 full-time attorneys and

1,200 paralegal personnel serving a million and a half clients. The total expenditure for all that is \$71.5 million and a backup center is a tiny little item in that, a coordinating service.

You suggest that they have done something unethical. Well, I listened very closely, sir, and I think I have to challenge you on that. You say that at least if the corporation had been directly under their control or if the corporation operated without contract but operated from the main office, these centers, that they "would insist that the services be done in an ethical way."

Can you name one unethical thing that a backup center has done?

Mr. WEST. Sir, I cannot because I don't have the information between the backup centers and legal services.

Mr. DRINAN. All right.

Mr. WEST. But I can certainly speculate, I think correctly, but I don't have any concrete evidence if that is what you are asking for.

Mr. DRINAN. All right. But even assuming that you did, you have to say, well, what is unethical, and you say they are very aggressive about this. Well, one of the reasons why Mrs. Green's amendment carried was that in Detroit a certain backup center got involved in the desegregation case there and people said it is not proper for a federally funded group to be giving advice, giving techniques, to plaintiffs in that particular area.

So, in the nature of things that the Legal Services Corporation has to do, would you concede directly or indirectly, what is at issue here? You say you have misgivings about legal services in general. Well, did the organization have any position originally when this bill passed, the whole bill?

Mr. WEST. Yes, indeed. We opposed it.

Mr. DRINAN. You opposed it?

Mr. WEST. Yes; we did.

Mr. DRINAN. So, you would be opposed to the bill, the whole thing?

Mr. WEST. We have conceded that the bill has passed, and we certainly recognize everyone should have a right to legal help, and since we are concerned with farmworkers, certainly we recognize that right, and we will stand on the fact that they should have that, but it ought to be done at least according to good legal practices.

Mr. DRINAN. All right. But if we were reauthorizing the \$71 for another year, assume that we were doing that, you would be here opposing the whole thing.

Mr. WEST. I don't think we would now, because we think you have got to go the 2-year period, as specified in the bill, to find out whether it is successful or not. The thing has become law. And there is a provision that it goes for 2 years and during that time it is self-analyzed, and they find out whether it is appropriate. I think our position now would be to go that period of time. Let's see whether it is necessary or unnecessary.

Mr. DRINAN. Suppose that this bill is not passed and suppose the Board of Directors of the Corporation does this thing directly, saying that they will pay these people in the backup centers and that they are not going to put it under contract, but need this backup center.

Mr. WEST. Then, I think they would have control over the backup centers that they would not have with this bill, and I think we would again stand on at least a 2-year study period time to find out what did happen.

Mr. DRINAN. Thank you very much.

Mr. KASTENMEIER. The gentlemen from New York, Mr. Pattison.

Mr. PATTISON. I take it that your position is that the higher up the line that you can concentrate control, the less likelihood there is of ethical violations.

Mr. WEST. Well, at least I think it would be some control somewhere, and I don't believe if we are just given carte blanche treatment to go out, each individual office, and get help from a certain backup center, that you would have any control. At least, your Board of Directors would have ultimate control if the Board did it.

Mr. PATTISON. Well, but it is clear, I mean, you agree that anything that the backup centers have done has been as private, nonprofit corporations that are not Government employees?

Mr. WEST. And I am certain they have been a part of our problem, but I can't give you a specific written document. They are part of our problem in New Jersey.

Mr. PATTISON. I understand that, but you understand they are private, nonprofit corporations that are not controlled by any governmental organization, except to the extent that they have a contract which is either renewable or not renewable by the Legal Services Corporation?

In other words, Legal Services Corporation, if in their judgment the backup center is engaging in unethical conduct, they can terminate their contract and certainly not renew it the following year.

Mr. WEST. Quite a difference whether they can terminate it or not renew it. You could go 11 months, conceivably, before they could terminate it, and an awful lot of damage could be done in that period of time.

Mr. PATTISON. Wouldn't you agree, and does your Government experience tell you it would be easier for a government to terminate a contract with a nongovernmental organization, as opposed to closing a governmental office once it has been established?

Mr. WEST. It certainly shouldn't be. It might work that way.

Mr. PATTISON. Shouldn't be easier?

Mr. WEST. Shouldn't be, no. I would certainly think if a Board, such as a Rural Legal Services Corporation Board, had complete control, they could close the office if they desired any time.

Mr. PATTISON. But, just in your experience in life, dealing with governmental agencies, the problem with disestablishing an existing governmental branch office, for instance, wouldn't you say that is harder to do than to terminate a contract with a private corporation?

Mr. WEST. I would have to admit I haven't seen many Government offices closed, but neither have I seen any services curtailed with private groups either. It seems to continue to grow in both instances.

Mr. PATTISON. The point I am trying to get at is, it appears to me since we know these things, the law allows all of the things that the Legal Service Corporation has done in the past through backup centers, to be done by the Legal Service Corporation itself, which is a governmental organization, that it would appear that your opinion is that the higher up it gets in the governmental structure, the more we have control over it; is that correct?

Mr. WEST. Yes, sir. I believe the Board would have control over it.

Mr. PATTISON. Well, in light of what has happened, for instance,

in the highest levels of government in the last 2 or 3 years, in terms of ethics and ethical conduct, would you trust people at the top level more than people at the lower level?

Mr. WEST. I believe the time has come in this country that we had better start trusting people in the higher echelons because there have been some problems, there always will be, but I still think the higher echelons of government have to be trusted or the voters will take care of it.

Mr. PATTISON. Wouldn't it be generally the Farm Bureau's basic fundamental position that it is better to do things at a lower level, where people are—for instance, where you would have a corporation as a private corporation under State law; that is, under the control or the oversight of the local bar associations, the same as any other lawyer? Wouldn't the Farm Bureau generally feel that the closer it is to the people, the better it is as far as control?

Mr. WEST. Generally speaking, but I would hate to see any authority given to the two rural legal service groups that I have mentioned here, the one in New Jersey, the one in Puerto Rico, because I know from experience that I would have no confidence in what they might do. Now, whether the State board, if and when it gets appointed in New Jersey or in Puerto Rico, will have control, I don't know either, but I don't believe with this bill that this will give those people any control either, and I would like to see a responsible Board of Directors have some control over the operations of the Corporation.

Mr. PATTISON. Have you pursued any of these complaints about ethical conduct with the New Jersey Bar Association?

Mr. WEST. Yes, sir. We are under constant work at the present time. I am not really free because I think a lot of these issues will be settled in the courts in time, but again at a severe cost to a group of organized farmers who have been trying to do something that was really brand new in this country, never been done anywhere until we tried it, something that has worked very well, and it probably is going to put us out of business before we can prove our point, just because we cannot afford to fight the Federal Government with the severe costs of legal fees. And this causes great concern.

Mr. PATTISON. I have no further questions.

Mr. KASTENMEIER. That then concludes our questioning of Mr. West, and, Mr. West, I would like to say that your point of view is important to the committee. I might also say that while this subcommittee presently is considering a piece of legislation consisting of an amendment, we now have oversight responsibility for the Legal Services Corporation and therefore that is not a one-way street. That is to say, if there are appropriate criticisms of the Corporation or of the system it underwrites in terms of inequities and improprieties, we would like to know about it.

Mr. WEST. I would certainly welcome this committee or some group actually looking into what has happened in our situation, and I think that you will be utterly amazed at the tremendous loss of Government dollars that did not one any good whatsoever. In fact, had normal legal practices been carried out and had these attorneys that allegedly had a complaint for a worker written us a letter, the worker would have received his check posthaste. As it is, some of them have waited 3 years now since the original suit was filed against us, and they will

have to wait until it is settled in court, and the worker is the loser. We would have sent the check if there were an error immediately on checking the records. We have had a history of doing it. This way, the worker has now waited 3 years and hasn't gotten his money, and may wait I don't know how long until the court gets around to it.

Mr. KASTENMEIER. As I understand, these complaints arise out of the dealings between workers represented by the Legal Services offices in New Jersey and the one in Puerto Rico in connection with two New Jersey farm cooperatives.

Mr. WEST. One cooperative in New Jersey. There have been no suits filed against the other one. There have been suits filed against one in New York, however, that we service.

Mr. KASTENMEIER. Thank you.

Mr. WEST. Thank you very much.

Mr. KASTENMEIER. Thank you for your testimony.

Mr. KASTENMEIER. Next, the Chair would like to call Mr. Bernard Veney, director of the National Clients Council and Mr. John G. Brooks, senior vice president of the National Legal Aid and Defender Association, called as a panel of two.

PANEL OF BERNARD VENNEY, DIRECTOR, NATIONAL CLIENTS COUNCIL; AND JOHN G. BROOKS, SENIOR VICE PRESIDENT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

Mr. KASTENMEIER. I am pleased to greet you, Mr. Veney, and I would like to yield to the gentleman from Massachusetts to greet Mr. Brooks.

Mr. DRINAN. Thank you, Mr. Chairman.

I welcome one of my distinguished constituents here, Mr. John G. Brooks. For many, many years, he has been involved in legal aid at the local and national level, and I am very happy that he is here and will speak so eloquently on this subject as the senior vice president of the National Legal Aid and Defender Association. We welcome you.

Mr. BROOKS. Thank you, Congressman Drinan.

Mr. Chairman, and members of the committee, I may say it is a great pleasure to be here to testify at the invitation of the committee before the committee in general and my Congressman in particular.

As Congressman Drinan has said, I am presently senior vice president of the National Legal Aid and Defender Association, having had many years of experience with the Boston Legal Aid Society. I was president of it, immediate past president. I am also immediate past president of the Boston Bar Association. And while I am officially here as representing NLADA, I think I can speak consistently with all three hats on for those three constituencies. And if I may, Mr. Chairman, just for the record, correct a statement about the Boston Bar letter, which was handed to our counsel before the meeting today, that is not an official vote yet of the Boston Bar Association Council. It is a communication from the Committee of the Boston Bar Association on Legal Services for the Indigent.

I am hoping that the council of the bar association will act very shortly, and if it does, I request permission to transmit that action to the committee.

Mr. KASTENMEIER. We accept that qualification for the record as stated.

Mr. BROOKS. Thank you, Mr. Chairman.

Mr. KASTENMEIER. And, Mr. Brooks, you may proceed as you wish. It is noted that you have a rather extensive statement, with appendices, and without objection your entire statement, with all the appendices, will be accepted for the record and you may proceed as you wish.

Mr. BROOKS. Thank you, Mr. Chairman.

I have in mind just to make two or three points, not to repeat what is in the prepared statement and the appendices, but to try to emphasize some of what to me seem to be the high points.

The issue clearly comes right down to the question do we at the Congress, does the public trust the Corporation's Board to handle its affairs properly with respect to backup centers. In other words, should the wings of the Corporation be clipped so that they do not have discretion to perform their duty to the public, to the poor, with broadly effective management policies? And it is worthy of noting, I think, that this is not a matter of substance, but rather a matter of method. In other words, what the backup centers in the field can do, the backup centers if hired by the Corporation could do internally as a matter of scope, as a matter of substance, and notwithstanding what has been said here this morning, I think it comes down just to that, that the Corporation's Board ought to be trusted to manage its affairs properly with the proper tools.

Now, there is one change I think since the act was originally enacted, and that is the composition of the Board itself. No one knew. Congress didn't know, the public didn't know, what kind of a board it was going to be. I think the Board as it has shaped up, as it has been appointed by the President, has turned out to be a very intelligent, hardheaded, effective broad-based Board, and I think if anyone had any doubts about whether the Board would be in the pocket of the Legal Services Corporation, the legal services projects or the backup centers, anyone could be disabused of that by knowing the Corporation, and you know the Corporation members, as I do. I have dealt with them. I find them a very independent lot, trying to do the best job they can for the public and the poor.

So that is a slight change of circumstances, which I think lends a little different atmosphere to whether House 7005 is appropriate now, when it might not have been when the act was in the original genesis.

Now, the next question is why can't the Board do it in-house, as well as out-of-house? I know you have heard testimony on that, eloquent testimony, on Wednesday. I just want to echo that from my own feeling, largely from my knowledge of the Consumer Law Center in Boston, which is the closest to me personally, where a variety of experience and talent lends great strength to their performance of research, assisting public bodies in drafting legislation, in drafting regulations, Federal Trade Commission, Federal Reserve Bank. They are in demand from such agencies as those to help them generate regulations, as well as legislation and in the training.

It gives a much more practical approach to have litigators training litigators, advising litigators in the field with their own practical experience on which to base their advice. At we all know, if that is done in-house, since the Corporation is not allowed to litigate, there

will be a very important ingredient missing, and that fact could either result in lack of that expertise of some duplication.

Now, there also is an enormous reservoir of talent and experience in the backup centers, which if the Board allowed the funding to expire, would expire with the backup centers, and to have the Corporation reassemble that kind of talent with anywhere near the same effectiveness would require at least a long delay, and might well be lost for good.

Now, the opposition to the House 7705 seems to me to be largely based on the success of the projects rather than on any well-documented abuses by the backup centers themselves. There were a great many criticisms and very few, in my experience, proved abuses. In relation to Mr. West's testimony, we at NLADA would like to investigate, to double check with our constituencies to see if any backup centers have been involved in the situations which Mr. West was referring to.

The farm workers group, Farm Workers Corporation, I think it is, is not a legal assistance corporation, not funded by OEO, or CSA or the Corporation. The Camden Legal Services Group is clearly what I think of as a retail operation, that is a local legal services project and not a backup center in itself. As far as we know, there is no backup center involvement in what Mr. West is referring to. And if the committee would allow us, we shall investigate that and submit that material as soon as possible, presumably within a few days, to the committee, with a copy, I trust, to Mr. West, so he can reply.

I think it also comes down to what the Legal Services Corporation, the legal services movement is all about anyway. The act itself says equal access to the system of justice, provide quality legal services to those who cannot pay. In order that that mandate be carried out, something on the order of backup centers is necessary somewhere along the line and just to get even more fundamental than that, I recur to my principle that I am a conservative, I am a lifelong registered Republican, and I like the status quo, but I think one of the best ways to maintain the status quo in general is to provide legal services to the poor—adequate legal services and good legal services so that they can feel part of the system.

We were all worried 4 or 5 years ago that the system might break down and it was much too close, and I think one of the things that helped bring it back was the legal services programs where the poor, where the least involved in the system, felt that they could have access to the courts and to justice. And I think H.R. 7005 is an important ingredient in providing the Corporation with the tools with which they can carry out their mandate and achieve the goals of the Legal Services Corporation bill.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. Thank you very much, Mr. Brooks.

Mr. BROOKS. Excuse me. May I just offer an example of what the Consumer Law Center in Boston, one of the backup centers, makes available to the Legal Services Committee in the way of a compendium of information of the nature of material that is supplied to private practitioners by various publishing concerns.

Mr. KASTENMEIER. We appreciate that and we will receive it. Thank you.

Mr. DRINAN. I would be particularly interested, since I was the founding father of the Consumer Law Center.

Mr. BROOKS. I should have paid credit to you, Congressman Drinan, on that. That is indeed true.

Mr. KASTENMEIER. We have backup materials from a number of the backup centers, so we appreciate your offer of those materials. We will now accept your formal written statement and the background material for the record.

[The statements follow:]

STATEMENT OF JOHN G. BROOKS, SENIOR VICE PRESIDENT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

My name is John G. Brooks. I am the Senior Vice President of the National Legal Aid and Defender Association (NLADA). NLADA was founded in 1911 to provide more effective legal services to indigents. Today more than 600 of the programs which will be funded by the Legal Services Corporation are members of NLADA as are nearly all of the back-up centers.

Because of its concern with high quality effective legal services for the poor NLADA has always supported the back-up centers and the activities they perform. Their activities are critical to the achievement of our national objective of equal justice for all.

This summer NLADA prepared an extensive report titled "Legal Services Back-up Centers Background Material." My testimony today is essentially a summary of that report. If I may, I would like to have the full report entered into the record.

There are presently sixteen back-up centers located around the country. Most of these centers specialize in a particular area of the law such as consumer law or housing law or in the laws that affect a particular group of poor persons such as senior citizens or native Americans. The other centers provide other specialized services to field programs.

The centers that specialize in particular legal areas perform a variety of functions. The laws that affect poor people have grown increasingly complex and technical. They present a bewildering maze of common law, Constitutional law, state and federal statutes and regulations issued by state and Federal and even city agencies. Field attorneys attempting to serve a heavy caseload with limited resources cannot take the time to master each of the areas of law which affect their clients and develop the needed research and materials. Even in larger programs where some specialization is possible it is wasteful and inefficient for several programs around the country to develop materials explaining, for example, Federal assistance to the elderly, when one national program can do the same thing in more depth and make those materials available to all legal services programs.

So each of the Centers stands available to assist individual field attorneys in client representation. The centers receive thousands of requests every year. Because of their expertise they are able to quickly and efficiently provide information and material in their area of specialization. In more complex cases they are often asked to assist as counsel or co-counsel. They are frequently asked to participate as amicus bringing a national perspective to a local problem. And they often represent national client groups in cases of national scope.

Because of the depth of their experience and their national perspective the centers often counsel against wasteful litigation that has little chance of success or suggest other more efficient forums for the redress of grievances.

For recurring problems the centers publish manuals, articles, newsletters and memoranda to assist field attorneys in dealing with these problems. Such manuals are of course regularly available in fields of commercial law to private practitioners. But only through the back-up centers have they been made available to lawyers for poor persons.

As a result of their litigation and research the centers develop close ties with regulatory agencies and legislative committees. They frequently are asked to comment on pending legislation and regulations. These close ties allow the centers to keep project lawyers alerted to developments in the law in their areas. Project lawyers in turn often ask the centers for assistance in representation before agencies and legislatures.

The centers regularly draw up the skills developed by their staff in litigation and research to train other legal services lawyers in their specialties.

In addition to the centers dealing in substantive law, there are a number of specialized centers which provide services to the field programs. These specialized services aid in more efficient use of local program money. They increase the quality of service to our clients by training and providing access to specialized resources.

NLADA itself has a grant to provide management assistance in the area of program management and administration. It assists in such matters as filing systems and docket control, caseload management, fiscal management, establishment of program priorities, fund-raising and personnel management.

The Legal Services Training Program has developed a highly successful method for training new lawyers in lawyering skills and for training in substantive areas of laws. The National Paralegal Institute provides training, training materials, technical assistance and support for the more than 1200 paralegals now working in legal services. The Legal Action Support Project is a part of the Bureau of Social Science Research. It provides to legal services lawyers litigating complex cases needed social science data and analysis as well as expert witnesses. The National Clearinghouse for Legal Services publishes the *Clearinghouse Review*, a monthly journal on poverty law distributed free to all legal services programs. In addition it maintains a library of more than 15,000 pleadings, briefs, unreported decisions, and other litigation and legislation work which are listed in the *Clearinghouse Review* and made available at no charge to legal services attorneys.

To perform these services the back-up centers have assembled dedicated and experienced staffs. Most back-up center attorneys have at least two years experience in field programs. Many of them have had experience in large law firms, as law school teachers or in the governmental agencies with which their center is involved. In a program which has been subject to staff turnover, the back-up center attorneys are among the most experienced in legal services. As part of its report, NLADA recently surveyed the staff patterns of back-up centers. We found, for example, that the five attorneys at the center on Social Welfare Policy and Law had a combined total of forty-four years' experience at that center. Lawyers at the Housing Project of the National Housing and Economic Development Law Project averaged eight years' experience.

We believe it is critical to the legal services program that the knowledge and experience of those lawyers not be lost.

Perhaps it would be helpful if I illustrate the importance of these functions by describing the back-up center with which I am most familiar, the National Consumer Law Center in Boston. The Consumer Center was established in 1969 and since that time has developed expertise in State and Federal law and regulations of Federal agencies which affect the low income consumer. The center responds to several hundred requests a year from legal services lawyers representing low income consumers in litigation. Responses range from brief advice to review and drafting of pleadings, interrogatories, and briefs to participation as counsel, cocounsel or amicus.

The Center regularly assists legal services attorneys who are representing clients before legislative and administrative bodies and has drafted model statutes and regulations for use by legal services attorneys in proposing legislation for the clients and client groups they represent.

The Center is called upon by Federal agencies and legislative committees to comment on pending legislation and regulations from the perspective of the low income consumer in areas such as bankruptcy, truth-in-lending, fair credit billing and credit collection practices.

Drawing on its litigation and representation experience the Center publishes a four-volume Consumer Law Handbook which is given free to all legal services offices. The Center regularly researches developments in consumer law and publishes articles in the *Clearinghouse Review* to disseminate the results of that research.

The Center regularly conducts training sessions for legal services attorneys in consumer law in conjunction with the Legal Services Training Program as well as specialized consumer law training sessions directly with field programs.

All of these activities are interwoven so that for example an attorney who litigates a major truth-in-lending case, publishes articles on truth-in-lending and trains field attorneys in truth-in-lending.

Finally, as an independent nonprofit corporation (with a board of legal services lawyers, client representatives and members of the public), the Center has been able to secure grants and contracts from other sources. For example, the Center wrote a guide to Pennsylvania consumer laws for the Pennsylvania Attorney General's office. As part of its contract the Center arranged for the guide to be distributed free to all legal services programs in Pennsylvania.

There can be no question that the back-up centers have been effective. In 1973 the Office of Legal Services ordered a special evaluation of the centers. The director of evaluation, a man who was openly hostile to back-up centers, personally approved the evaluators. The evaluations were uniformly favorable. NLADA has reviewed those evaluations. Here are some typical quotations from them:

Insofar as the quality of the support given Legal Services programs is concerned, the latter [Legal Services attorneys] report overwhelming approval of the work product. (Indian Law Back-up Center.)

The [National Consumer Law Center] responds well to the needs of Legal Services attorneys in the field.

The National Employment Law Project prepares prompt and thorough responses to specific requests for legal advice and assistance from legal services programs. . . .

After three days of intensive interviewing and perhaps as many as 60 telephone contacts with offices in the field, the team was faced with only positive reactions. . . . attorneys for the Center . . . produced the type of work that one normally associates with the largest and most respected law firms in the private sector. (Center on Social Welfare Policy and Law.)

The [National Housing and Economic Development Law Project] seems to be staffed with talented individuals who are performing an exceptional role in servicing the needs of Legal Services attorneys throughout the United States.

Within the severe limitations of its size and budget [the Legal Action Support Project] has accomplished professional and valuable work in surprising volume.

. . . every paralegal should have the opportunity to participate in such a training program. (January, 1974) Never before have we been privileged to observe as dedicated and enthusiastic staff. . . . (January, 1975.) (National Paralegal Institute.)

Why, then, have the centers been so controversial? Because they have been effective in improving the quality of legal services to poor people. As a result they have helped clients win important cases against powerful interests, and have assisted in obtaining legislation which gave assistance to poor persons and protected them from exploitation. But it was not the back-up center lawyers that did these things. It was judges who ruled that their cases were meritorious and legislators who decided that their proposals were sound. Surely there can be no better measure of back-up centers' importance and excellence than these successes.

The present language of the Legal Services Corporation Act will require substantial changes in the provision of support services and specialized representation. The Act prohibits the provision of "research, training and technical assistance, and . . . clearinghouse . . ." functions by grant or contract. Thus many of the functions now performed by the centers would have to be done by newly formed "in-house" units of Corporation employees. At the same time the Corporation is prohibited from "participation in litigation on behalf of clients" except in its own behalf.

If the Corporation wishes to continue to provide specialized representation on a counsel or co-counsel basis and to provide those functions directly related to client representation it could apparently only do so by a grant or a contract.

As a result the Corporation loses the flexibility to provide the services in the manner it decides is most effective and an inefficient wasteful duplication of effort is forced upon it. Rather than having those lawyers with the most experience in representation in specialized areas drawing on that experience to provide research and training to field attorneys, the Corporation would be forced to set up another staff of its own employees who could not litigate and yet would be asked to train and do generalized research for litigating attorneys.

For example, if the specialized litigation and representation skills of the Consumer Center were retained its lawyers could not train other legal services lawyers nor could the center continue to publish manuals and articles on con-

sumer law. The Corporation would have to hire another set of lawyers to gain the very skills already assembled at the Consumer Center so that they could provide generalized research and training. And those in-house lawyers would be unable to develop or maintain their skills or assist field attorneys by participating in litigation.

Other inefficiencies and loss of resources will inevitably occur. For example, if the Indian Law Center were to be taken "in-house" legal services attorneys would lose access to the resources of the Native American Rights Fund with which it is affiliated. Similarly, the Legal Action Support Project would lose the resources of the Bureau of Social Science Research.

H.R. 7005 by restoring grant and contract authority will restore to the Corporation the flexibility it needs to provide the most effective and efficient services. H.R. 7005 does not require the Corporation to continue all of the present back-up centers or any particular back-up center. Rather it will permit the Corporation to carefully study and evaluate all the Centers and the services they perform and decide what is the best way to structure those services.

The Board of the Corporation is a responsible one chosen by the President and confirmed after extensive hearings by the Senate. We are confident that this Board has the ability to make wise and responsible decisions about the provision of support services and specialized representation. Where the Corporation decides that an "in-house unit" is the best use of its resources it should be permitted to set up such a unit. But where the Corporation decides that the most effective and efficient mechanism is to make a grant or contract with a group to provide specialized representation and research and technical assistance or to provide other specialized services the Corporation should be free to implement that decision. H.R. 7005 would give the Corporation the administrative freedom it needs to function effectively.

The Centers are presently operating on funds granted by the Community Services Administration. Those grants expire on March 31, 1976. Unless its legislative authority is modified the Legal Services Corporation will be unable to fund the centers to perform their present functions past that date. It is therefore critical that there be prompt action on H.R. 7005.

In summary, NLADA strongly urges passage of H.R. 7005. Its passage would permit funding of the back-up centers so that they could continue to provide their important services to legal services programs and poor persons. Its passage would give to the Legal Services Corporation the flexibility needed to provide for support services and specialized representation in the manner it decides is most effective and efficient.

LEGAL SERVICES BACKUP CENTERS BACKGROUND MATERIAL

(Prepared by the National Legal Aid and Defender Association)

OUTLINE OF SUPPORT CENTER FUNCTIONS AND THE CORPORATION ACT

Legislative References

1006(a) (1).—Funding by grant or contract with programs providing legal assistance to eligible clients.

1006(a) (3).—Funding directly of research, training, technical assistance and clearinghouse activities relating to the delivery of legal assistance.

1006(c).—Prohibition on Corporation's participation in litigation and limitation on its participation in legislative activity.

1007(b) (3).—Prohibition on funding private law firms.

1007(b) (5).—Training of attorneys and paralegals.

Clearinghouse (Clearinghouse Review)

1. Publication of articles and recent case law and legislative and administrative developments.

2. Reproduction and distribution of pleadings and other materials.

Training (Legal Services Training Program, National Paralegal Institute and Substantive Support Centers)

1. Instruction in specialized topical substantive areas of poverty law.

2. Instruction of legal services field staff (attorneys, paralegals, and others) in case-handling skills.

3. Instruction in the techniques of management and administration.

4. Instruction of program board members in their duties and responsibilities.
5. Instruction of clients or other members of the community on the rights and responsibilities of the poor.

Technical Assistance (NLADA TAP; National Paralegal Institute, Substantive Centers)

1. Design, planning and dissemination of information concerning litigation tactics and strategy relating to specialized substantive areas of law.
2. Assisting program management and administration, planning procedures, office supervision, office paperwork control, ethical supervision and personnel utilization.

Research (Substantive Centers, BSSR, National Paralegal Institute, Legal Services Training Program)

1. Topical updates, historical summaries or memoranda concerning areas of law of special concern to the poor.
2. Model briefs or legal memoranda on substantive or procedural questions.
3. Manuals, newsletters and handbooks on substantive poverty law and procedural developments.
4. Identification of legal issues.
5. Development of litigation strategy and tactics.
6. Analysis of legislative and administrative policies and regulations.
7. Response to questions raised by local legal services programs on substantive issues.
8. Surveys and studies on effective delivery of legal services.
9. Substantive or procedural research developed in the course of furnishing legal assistance with respect to particular clients.
10. Relevant background and evidentiary material developed in the course of furnishing legal assistance to eligible clients.

Representation

1. Litigation on behalf of eligible clients.
2. Legislative representation on behalf of eligible clients.
3. Administrative representation on behalf of eligible clients.

NATIONAL CLEARINGHOUSE FOR LEGAL SERVICES, CHICAGO, ILL.—MARY ADER, DIRECTOR

Description

NCLS provides information and support services to legal services attorneys by (1) publishing the *Clearinghouse Review*, a monthly journal on poverty law; (2) maintaining a unique library of poverty law pleadings, opinions, and legislation, and distributing copies of these on request; and (3) by printing manuals and handbooks. Through the pooling of information, resources and the work-product of all legal services attorneys, NCLS enables neighborhood attorneys to provide more services, more competently, to more people, in less time.

Each issue of *Clearinghouse Review* contains feature articles which comprehensively describe new developments in all areas of legal services practice. In addition to articles submitted regularly by the back-up centers, each issue contains a legislative report, a synopsis of litigation, administrative proceedings and decisions, a positions available service, and a poverty law bibliography. All legal services attorneys receive the *Review* free of charge.

The NCLS library has over 15,000 pleadings, briefs, unreported decisions, and other litigation and legislation work products received from poverty law practitioners at a rate of 400 per month. All contributors are informed of the Clearinghouse Number of their materials, and are urged to keep NCLS informed of future developments.

These documents are listed in the *Review* by number, and are distributed on request to legal services projects free of charge.

NCLS also prints and distributes additional manuals and handbooks on a wide range of topics.

Staff

NCLS employs three attorneys and a librarian, plus appropriate support staff. CSA annualized funding for NCLS: \$280,000.

LEGAL SERVICES TRAINING PROGRAM, COLUMBUS SCHOOL OF LAW, CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, D.C.—RICHARD CARTER, DIRECTOR

Description

The Legal Services Training Program provides continuing legal education to lawyers in Community Services Administration-funded legal services programs, offering training sessions, both national and regional, in lawyering skills and substantive areas pertinent to poverty problems.

The training, particularly that for new lawyers is centered around a hypothetical case. The trainee must take this case from the initial client interview through trial, participating in a simulated interview with an actual or former legal services client, a deposition, a settlement negotiation and trial. These simulations are interspersed with small group discussions, substantive seminars, individual group and videotape critiques.

Subjects covered, in addition to the lawyering skills and the management training, have included Consumer Law, Federal Practice, Family Law, Indian Law, Migrant Law, Legislation and Legislative Advocacy, Housing Law, and Food and Nutrition Law.

The program has also begun a series of training in our techniques for advanced lawyers who in turn conduct training on the local level, particularly for the larger urban programs and the state-wide programs as an on-going supplement to their local orientation training.

During the past year, the Training Program has expanded its scope of resources from practicing attorneys (both in and out of legal services) and substantive experts to include actual or former clients. They participate as "clients," and "witnesses" in the hypothetical cases, providing the trainees with invaluable feedback during the individual critiques. There has been an effort by the Program to consult directly with this important group in designing the training.

The Program also provides training in the appropriate skills for project directors and support staff.

Staff

The Program staff of nine employees includes two attorneys, conference and training coordinators, and a counseling specialist, with an average of 4½ years each in legal services.

CSA annualized funding for the Program: \$670,000.

NATIONAL PARALEGAL INSTITUTE, WASHINGTON, D.C.—WILLIAM R. FRY, EXECUTIVE DIRECTOR

Description

The National Paralegal Institute (NPI), established in 1972, is the only national resource available to legal services projects that need information, training, training materials, technical assistance and support for the more than 1,200 paralegals now working in legal services.

NPI has trained over 250 CSA paralegals in eleven sessions. NPI also trains a limited number of trainers to do training and follow-up in individual legal services projects and in the regions. Based on a study of project needs, NPI designed three intensive training programs—for new paralegals, administrative advocacy specialists and those handling SSI and Social Security disability cases. These one-week programs, delivered regionally in retreat settings, emphasize basic skills of interviewing, investigation, negotiation and administrative hearing representation. All include courses on legal research, unauthorized practice of law, advocacy and professional responsibility and roles of paralegals. They also cover concepts of domestic relations, landlord-tenant, disability and welfare law.

A series of books, videotapes and films developed by NPI on general skills and substantive law are available to all legal services programs. These include an SSI Handbook for lay advocates and an Advocates' Handbook—*Representation at a Social Security Hearing: Focus on Disability*. In 1974 NPI responded to over 2,000 orders for these materials.

Two comprehensive surveys and a major report on the status of legal services paralegals have just been completed. A quarterly newsletter goes to about 3,000 people. NPI is drafting model legislation on accreditation of paralegal training programs and certification of paralegals and preparing a study on unauthorized practice of law. Direct technical assistance to legal services projects includes implementation of models for paralegal utilization and training, answers to letters and telephone requests, site visits where necessary and drafting of position papers, briefs and legal memoranda. NPI also works with bar associations,

colleges, law schools, paralegal associations, government agencies and others concerned with the development of the paralegal movement.

Staff

NPI employs 4 lawyers with a combined total of 28 years of legal experience, 26 years of legal services or related work and 10 years of teaching experience. NPI's 4 paralegals have a combined total of 26 years of legal services and 12 years of teaching experience.

CSA annualized funding for NPI: \$332,000; current funding ends: August 31, 1975.

THE MANAGEMENT ASSISTANCE PROJECT, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, WASHINGTON, D.C.—MICHAEL B. BROWDE, ACTING DIRECTOR

Description

The Management Assistance Project (MAP) (previously known as the Technical Assistance Project) provides on site and other consultative services to CSA funded Legal Services Programs in the areas of program management and administration. MAP's direct services are delivered primarily through the use of consultants selected for their particular expertise. The consultant list of over 75 persons maintained by M.A.P. includes people currently in Legal Services, ex Legal Services people and people outside Legal Services with skills and abilities uniquely suited to assist with management problems in Legal Services.

Since July, 1971, MAP staff and consultants have made over 300 visits to approximately 150 different programs in every region of the country. These visits have touched upon the full range of program management problems, including filing systems, case load management, fiscal management, reporting systems, case review methodology, establishment of program priorities, new project director orientation, fund raising, and personnel management.

In addition to these on-site visits, MAP staff have identified four major areas of need in which they are concentrating their own efforts in consultation and the development of materials. These are: (1) Program planning involving program staff, board and clients—In this area MAP developed a manual, *Too Many Clients, Too Little Time: A Guide to Management Planning for Legal Services Programs* (1974), and provides consultants to programs desiring to use the manual in the development and implementation of a management plan; (2) Fund Raising—MAP is engaged in an on-going effort to develop and circulate materials on alternative funding sources for Legal Services programs; (3) New Project Director Orientation—MAP provides consultant and material assistance to new project directors early in their tenure so that the transition from one director to another will be as smooth as possible; and (4) Administrative Systems—MAP has developed materials for use by programs in establishing filing system, caseload control mechanisms, personnel policies, administrative manuals, etc.

Staff

The MAP staff is composed of an Acting Director, Deputy Director, Management Analyst, Staff Writer, Administrative Assistant and a Secretary. The non-clerical staff has an average of 5 years in Legal Services and an average of 3 years with MAP.

CSA annualized funding for MAP: \$300,088; current funding ends: September 30, 1975.

CENTER ON SOCIAL WELFARE POLICY & LAW, NEW YORK, N.Y.—
HENRY A. FREEDMAN, DIRECTOR

Description

The Center on Social Welfare Policy and Law has provided assistance to legal services lawyers and clients with respect to public benefit programs for the needy providing cash assistance (e.g. SSI, AFDC) and related medical benefits and social services, since the Center's establishment in 1965. It was the first such center established by OEO.

The Center answers approximately 2,000 inquiries from legal services lawyers each year. The nature of the response may vary from a detailed opinion letter, to provision of materials, to a discussion of approaches short of litigation which should achieve the desired results for the client.

The Center has also been the active participant, or of counsel, in major welfare litigation throughout the country. For example, the Center has briefed and

argued cases on the appellate level that have been filed by local legal services attorneys in small rural offices. Where its skills and resources are required, the Center has become directly involved in litigation and administrative representation.

The Center provides welfare specialists in local legal services programs with a regular flow of memoranda analyzing the implications of changes in federal law and regulations. The Center has also prepared and distributed a 3 volume set of "Materials on Welfare Law," a Model Annotated Complaint for welfare litigation, and a highly detailed SSI Advocates Handbook.

The Center responds to inquiries from legislators and agency administrators and their staffs, and follow developments in the legislative and regulatory area closely.

Center attorneys participate in training sessions for legal services lawyers sponsored by the Center or by other legal services programs.

Staff

The total staff of the Center includes 7 attorneys. The 5 attorneys currently employed have a combined total of 44 years legal experience, and 18½ years experience at the Center itself. These attorneys have specialties in areas including federal eligibility standards, application and termination practices, SSI, and food programs. The Center also currently employs 1 social worker and 2 librarians.

CSA annualized funding for the Center: \$395,000; current funding ends: September 30, 1975.

NATIONAL CONSUMER LAW CENTER, BOSTON, MASS.—MARK BUDNITZ, DIRECTOR

Description

Since its establishment in 1969, NCLC has developed an expertise in the consumer protection area which exists nowhere else. Because of the complex inter-relationships in this area between state laws, federal statutes, regulations promulgated by federal agencies such as the Federal Trade Commission and the Federal Reserve Board, NCLC receives hundreds of requests each year from legal services attorneys. Sometimes adequate help can be given to attorneys representing clients who are either plaintiffs or defendants in consumer litigation by furnishing them with appropriate advice and materials. Other requests require NCLC to review and help draft pleadings interrogatories and memoranda, to write amicus briefs, and to participate as counsel or co-counsel.

NCLC provides technical assistance to legal services attorneys who find their clients can be adequately represented only by legislative change in the law. NCLC has produced several model statutes to assist attorneys who are drafting their own bills. NCLC has also been involved in administrative advocacy, typically in commenting on Trade Regulation Rules promulgated by the FTC.

NCLC has published material dealing with the legal aspects of consumer program, as well as running specialized training conferences on its own.

NCLC has published material dealing with the legal aspects of consumer protection, chiefly the Consumer Law Handbook. Two volumes of the Handbook consist of a detailed history of Truth in Lending. The remaining two volumes discuss warranties, collection practices, unconscionability, unfair and deceptive practices, repossession, defense cut-off devices, and public utility terminations and deposits.

Staff

The Center currently employs six attorneys and additional professional support staff with a total of 32 years of legal experience, 31 years of which is legal services experience.

CSA annualized funding for NCLC: \$396,504; current funding ends: September 30, 1975.

NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT, EARL WARREN LEGAL INSTITUTE, BERKELEY, CALIF.—ALVIN HIRSHEN, DIRECTOR OF THE HOUSING PROJECT; AL BLAUSTEIN AND MIKE SMITH, CODIRECTORS OF THE ECONOMIC DEVELOPMENT PROJECT

Description

The Project provides back-up assistance to legal services lawyers in housing law and community-based economic development.

Most of the Housing Law Section's activities fall within the following 4 categories: landlord-tenant law; federal planning and redevelopment programs; public housing; and housing production, rehabilitation, related contracting, and employment. In each of these areas, the Project undertakes research and the development of model legislation, and provides back-up assistance for legal services attorneys engaged in litigation or administrative actions. The section's major publications include its *Handbook on Housing Law*, the *Law Project Bulletin*, and the *California Eviction Defense Manual*.

The Project's Economic Development Law Section carries on 3 broad categories of activity: practicing law-type assistance to legal services lawyers, legal research and writing in the field of economic development law, and advisory service to CSA and other government agencies on regulatory and legislative matters related to community economic development.

In the first category, the Project assists and trains legal services lawyers and community groups in establishing nonprofit community development corporations and in obtaining financing for their activities.

Finally, the Project maintains regular contact with various government agencies for purposes of suggesting changes in rules, regulations, and procedures insofar as they affect community-based economic development efforts.

Staff

The Housing Project currently employs 5 attorneys, a Washington, D.C. counsel, and 2 research assistants. Project attorneys average 8 years legal experience.

The Economic Development Project employs 6 attorneys, 1 city planner, and 1 research assistant.

CSA annualized funding for the Housing Project: \$403,800; current funding ends: September 30, 1975. current annualized funding for the Economic Law Project: \$271,200; current funding ends: September 30, 1975.

INDIAN LAW BACKUP CENTER, NATIVE AMERICAN RIGHTS FUND, BOULDER, COLO.—
BRUCE R. GREENE, DIRECTOR

Description

The Indian Law Backup Center of the Native American Rights Fund provides materials, advice, and research in cases in which legal services attorneys who serve Indian desire assistance. The Center acts as major counsel in litigating those cases which are beyond the means as well as expertise of legal services lawyers practicing in remote parts of the country.

In conjunction with the Legal Services Training Program, the Center has conducted an Indian law seminar, training Indian legal services attorneys in skills and in substantive law areas, including the relationship of federal and state governments to Indians. The Center periodically sends out papers prepared by NARF attorneys, and publishes *Indian Law Developments*. NARF also maintains a National Indian Law Library, which serves a unique repository for Indian legal materials.

Staff

The current CSA grant to the Center provides only enough money for slightly less than two attorneys' full time. One attorney devotes his time exclusively to legal services. However, by using the attorneys of NARF (which is funded largely by private foundations and individual contributions) on an hourly basis, the Center has available the expertise and experience of the 16 NARF attorneys. These attorneys are proficient in areas including Indian water law, natural resources, Indian education, civil rights, and problems of Indian prisoners.

CSA annualized funding for the Center: \$65,000; current funding ends: September 30, 1975.

NATIONAL EMPLOYMENT LAW PROJECT, NEW YORK, N.Y.—WALKER THOMPSON,
DIRECTOR

Description

The Project has, since 1969, provided legal assistance in the area of employment law to legal services attorneys throughout the country.

Following the needs of the legal services client community, the Project concentrates its litigation efforts in the following substantive areas: employment discrimination, unemployment compensation, labor relations, fair labor standards, manpower programs, and public employment. While some of the Project's litigation is initiated on behalf of clients directly by Project staff, in the vast

majority of cases, the Project serves in an "of counsel" or "co-counsel" capacity to legal services attorneys.

The Project has also provided assistance in administrative advocacy and legislative drafting.

The Project regularly informs programs of important developments through its newsletter, and has prepared and distributed the *Legal Services Manual for Title VII Litigation*. The Project has also prepared model Title VII complaints and guidelines, and a pamphlet detailing the procedural prerequisites to the filing of a Title VII complaint.

The Project staff has conducted a number of training sessions, geared to specific and recurring inquiries from local programs.

Staff

The Project currently employs eleven attorneys, with a combined legal experience of 53 years, plus support staff.

CSA annualized funding for the Project: \$224,850; current funding ends: September 30, 1975.

NATIONAL HEALTH LAW PROGRAM, LOS ANGELES, CALIF.—STANTON J. PRICE, DIRECTOR

Description

In the face of a complex and constantly changing health system and an evolving body of health law, the National Health Law Program offers neighborhood attorneys across the country a central resource for assistance in securing for their clients access to the best possible medical services and conditions. NHelp achieves this by (1) assisting neighborhood attorneys in recognizing when clients' health problems can be resolved within the scope of work normally done by a law office; and (2) assisting in the proceedings necessary to affect the resolution of the problems.

During the first six months of 1975, the program responded to requests for assistance made by attorneys in over 80 neighborhood programs in 27 states and the District of Columbia. In addition, the program responded to requests from numerous organizations representing low-income people as well as legislatures and administrative agencies.

In undertaking this role as an assistant to legal services programs, NHelp provides the information-gathering and analysis of problems needed for effective client representation. NHelp articles, materials, the Newsletter, periodic letters on specific issues, and training programs help to make NHelp expertise widely available to other attorneys. NHelp maintains contacts with an extensive pool of knowledgeable experts who can be called upon by neighborhood attorneys when such resources are needed.

In meeting its second function of effecting solutions, there are several different categories of response, including assistance in litigation, drafting and commenting on legislation, representation before administrative agencies and participation in negotiations with the private and quasi-public agencies which play an important role in determining the type of care poor people receive. In all instances, assistance may range from advice over the telephone to participation as co-counsel, and every stage of assistance in between as necessary to meet the needs of the attorney at the local office where the problem originates.

Staff

The NHelp staff consists of 6 attorneys, an administrative assistant, and two health policy analysts, one of whom holds a masters in public health, the other a masters in public planning. The staff averages approximately 4 years in legal services.

CSA annualized funding for NHelp: \$356,664; current funding ends: September 30, 1975.

NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES, CALIF.—PAUL S. NATHANSON, DIRECTOR

Description

The activities of the NSCLC can be broadly divided into two categories. The first activity concerns the traditional function of providing legislative and litigative technical assistance to legal services attorneys throughout the country in matters affecting the low-income elderly. These matters include SSI, Social

Security, pensions, age discrimination in employment, involuntary commitment, guardianship, health, housing, consumer matters, and veterans affairs.

The Center provides technical assistance through its publications, including a periodic developments newsletter, a Washington weekly digest of legislative developments, an SSI training manual, and an estate planning guidebook.

The Center has also held both nationwide and regional training sessions for the purpose of sensitizing legal services attorneys to the legal problems and needs of the low-income elderly.

NSCLC has drafted legislation in various fields affecting the elderly, commented on proposed regulations, and appeared as counsel of record, co-counsel, or amicus in a variety of suits.

The Center has established a network of communication with legal services attorneys specializing in problems affecting the elderly. The Center's assistance has ranged from in-depth research and comprehensive analysis of cases and statutes to short answers to simple requests.

The second category of assistance involves the expansion of delivery of legal services to the elderly. Efforts have been made to link legal services attorneys to other resources, including funding sources, concerned with the problems of the poor.

Staff

The Center employs eight attorneys, one administrator, and a clerical staff. CSA annualized funding for NSCLC: \$366,380; current funding ends: September 30, 1975.

CENTER FOR LAW AND EDUCATION, CAMBRIDGE, MASS.—ROBERT PRESSMAN, DIRECTOR

Description

The Center frequently receives requests for advice and materials on education law matters from legal services programs throughout the program. Local program attorneys are informed of possible approaches to problems and leading cases, and are given materials pertinent to the cases on which they are working.

The Center gives this technical assistance to local programs, and litigates itself in subject areas including: pupil classification practices, exclusionary devices which disproportionately affect poor children, racial discrimination, issues associated with federal educational programs, special education, the due process rights of students, and bilingual education.

Several times a year, the Center conducts two-day workshops on educational issues for legal service attorneys.

The Center reaches all legal services attorneys through its publications. These include *Inequality in Education*, a magazine published quarterly, the *Education Law Bulletin*, and packets of material on individual topics.

Staff

The Center employs, in addition to support staff, seven attorneys, two of whom work half-time. The director of the Center worked for five years in the Civil Rights Division, U.S. Department of Justice, prior to joining the Center in 1970. The experience of the other attorneys ranges from two to seven years.

CSA annualized funding for the Center: \$391,101; current funding ends: September 30, 1975.

LEGAL ACTION SUPPORT PROJECT, BUREAU OF SOCIAL SCIENCE RESEARCH,
WASHINGTON, D.C.—DR. LEONARD H. GOODMAN, DIRECTOR

Description

The Legal Action Support Project provides social science research services to legal services field programs and to other back-up centers.

By far, most of the work done by LASP is in the context of specific lawsuits filed by other legal services programs. LASP has specialized in designing studies, collecting, processing and analyzing various kinds of data, providing expert testimony, and writing research reports and affidavits for use by legal services attorneys. At times, LASP analyzes data collected by others.

As an example of the Project's work, a LASP economist worked with legal services attorneys in Winston-Salem who were representing senior citizens who wanted to block a public utility rate increase. He analyzed the income and expenses of the senior citizens, and concluded that the rent increase, if granted,

would be paid for at the expense of food, and many of the clients were already living on minimal diets. This expert testimony at a N.C. Power Commission hearing was instrumental in the clients' successful opposition to the rate increase.

In addition to its work on specific cases, LASP has prepared a number of monographs on substantive issues, as well as a manual for legal services programs entitled, *Sources and Uses of Social and Economic Data: A Manual for Lawyers*. This is a guide to attorneys who may have to use statistical information, as well as a general reference volume for locating such information.

Staff

The LASP staff consists of a sociologist, an economist, a political scientist, an education specialist and research assistants, as well as an attorney. As a division of BSSR, LASP not only has access to the Bureau's specialized library and computer facilities, but to its highly experienced research personnel, including statisticians, sociologists, social psychologists, demographers, survey analysts, and computer programmers.

CSA annualized funding for LASP: \$104,000; current funding ends: September 30, 1975.

NATIONAL JUVENILE LAW CENTER, SAINT LOUIS UNIVERSITY SCHOOL OF LAW,
ST. LOUIS, MO.—PAUL PIERNSMA, DIRECTOR

Description

The Center provides assistance, including consultation, legal research, drafting of pleadings, motions, and briefs, participation in litigation in selected cases, and drafting and review of proposals for the revision of juvenile court statutes, to legal services attorneys in the area of juvenile law. Center attorneys work closely with local program attorneys in litigation seeking to implement the right to counsel in juvenile institutions, reform juvenile court procedures, and safeguard the rights of children and parents.

To meet the need for basic practice materials, the Center published a manual entitled *Law and Tactics in Juvenile Cases*.

The Center has been working with the Legal Services Training Program in planning a series of family law conferences for legal services attorneys. For use in these conferences, a set of materials has been prepared including model briefs and arguments on termination of parental rights.

Center attorneys also provide assistance to legal services programs concerning state and federal legislation affecting the rights of children and parents. The Center collects proposed legislation from the various states and serves as a clearinghouse in providing information relating to these proposals.

Staff

The staff of the Center consists of six full-time attorneys plus clerical staff. CSA annualized funding for the Center: \$198,000; current funding ends: September 30, 1975.

MIGRANT LEGAL ACTION PROGRAM, WASHINGTON, D.C.—RAPHAEL GOMEZ, ACTING
DIRECTOR

Description

MLAP, since 1970, has served as a support center for legal services programs serving the needs of migrant and seasonal farmworkers.

MLAP litigates, and offers assistance to local programs, on a wide variety of issues, including access to farmworker camps, employment services, the Farm Labor Registration Act, food stamps, workmen's compensation, and immigration.

MLAP holds training conferences for legal services attorneys on federal legislation affecting migrants. The Program is particularly interested in assisting programs to increase their capability to provide legal services to farmworkers.

The Program distributes its own publication, *Earthbound*, to legal services attorneys. This serves as an information source and forum on migrant legal problems.

Staff

There are presently seven staff attorneys at MLAP, and one paralegal.

CSA annualized funding for MLAP: \$376,000; current funding ends: September 30, 1975.

YOUTH LAW CENTER, WESTERN STATES PROJECT, SAN FRANCISCO, CALIF.—PETER SANDMAN, DIRECTOR

Description

As a section of the Youth Law Center, the Western States Project relies on YLC staff members, in addition to experienced juvenile law litigators in the field, to provide advice and assistance to legal services lawyers on issues in juvenile law and school law. The following issues are included in juvenile law matters: delinquency adjudications, neglect and dependency, right to counsel, due process, record sealing, probation revocation, institutional care and treatment, and community alternatives to juvenile court jurisdiction and institutions. Student rights and quality of education are issues of concern within the area of school law.

The Project has the following objectives: (1) assuring that the due process protections established by *In re Gault* are being provided to all juveniles; (2) assuring that institutions in which juveniles are incarcerated provide meaningful care and treatment; (3) assuring that judicial scrutiny and standards are brought into the area of neglect and dependency proceedings; and (4) diverting as many children as possible from juvenile court and institutional jurisdiction into community alternatives.

Staff

The Project employs two attorneys, with an average of ten years legal experience, and seven years in legal services.

CSA annualized funding for the Project: \$72,000; current funding ends: September 30, 1975.

LEGAL SERVICES BACK-UP CENTERS: A BRIEF DESCRIPTION AND ANALYSIS

(Prepared by the National Legal Aid and Defender Association and Action for Legal Rights)

This brief paper attempts to set out a description of the present functions and staffing of the Legal Services Back-up Centers, the record established to date, the need for the continuation of those functions within legal services, the effect of the Legal Services Corporation Act upon the present functions, and a rationale for legislative amendment. Attached are summaries of the activities of each existing support center, their staffing and annualized funding. As a separate document, we have compiled some of the charges made against the centers and a response thereto. This paper in no way seeks to completely analyze or serve as definitive statement on all of the questions about the back-up centers facing the board.

I. DESCRIPTION OF THE CENTERS AND THEIR FUNCTIONS

There are now several kinds of support functions. A function—primarily carried out by the substantive national support programs (e.g. the Center on Social Welfare Policy and Law) is to provide specialized assistance to the 263 local legal services programs on a problem by problem basis. This occurs in highly complex or technical cases where local resources are insufficient to handle a particular case or portion thereof, and in legislative and administrative problems on a national level where local programs do not have the time, expertise or capability to provide the needed representation.

Many of the support programs participate in law revision commissions and agency commissions developing legislation or administrative regulations affecting the poor.

Research conducted by support program staff may be related to general substantive issues and involve topical updates, model briefs, manuals and handbooks, or it could involve substantive or procedural research or background and evidentiary material developed in the course of furnishing legal assistance to eligible clients or client groups. It could also involve conducting surveys and studies related to the effective delivery of legal services. The programs providing these services seek to identify for the legal services field staff the legal issues in the problems encountered, assist field lawyers with the development of litigation strategy and tactics, and analyze legislative and administrative policies and regulations. A large portion of time of these programs is spent responding to specific questions raised by local legal services attorneys on substantive legal issues and problems.

The substantive support centers are broken down into those responsible for expertise in specific legal subjects (e.g., housing, consumer) and those for problems relating to specific categories of the poor (e.g., elderly, migrants, Indians).

Second are the training functions which involve instructing lawyers in case handling skills, project administration and management and substantive law areas and designing, packaging and testing training materials and delivering training programs for paralegals. There are also some training programs for other project support staff. These functions are primarily carried out by the Legal Services Training Program and the National Paralegal Institute.

Third is the clearinghouse function which involves the publication of articles and recent case law and legislative and administrative developments and the reproduction and distribution of pleadings and other materials. The National Clearinghouse for Legal Services performs this function by preparing and publishing the *Clearinghouse Review*, maintaining a pleading library and serving as a distribution center for both local and support project materials.

Fourth are the technical assistance functions. The NLADA Management Assistance Project is primarily responsible for delivery support services in program management and administration, planning procedures, office supervision, office paperwork control, ethical supervision and personnel utilization. Other centers also deliver some technical assistance related to their particular areas of expertise.

Many of the centers provide local projects with support in more than one of the four general functions always within each center's particular expertise. The centers also coordinate with each other where there may be complementary activities.

Although initially placed in university settings so the development of the new fields of law would benefit from academic resources, most of the support centers are now independent nonprofit corporations similar in structure to local legal services programs and governed by boards representative of wide geographic areas and made up of local legal services attorneys, clients, members of the private bar and other professionals with expertise in the subject specialty of the center or the area of delivery with which it is concerned. The programs still within university settings are likewise guided by advisory boards of similar composition. The present centers are geographically spread and all are in close contact with local legal services programs on a daily basis. The centers have not been left solely to the control of the Office of Legal Services or the university, but have developed mechanisms to assure accountability to the poor, the bar and the local legal services programs they serve.

II. STAFF

Virtually all personnel in support centers have substantial experience as legal services field staff. This is often combined with prestigious private law firms or relevant government agencies. Many have taught in law schools before joining the centers and some now teach part-time at law schools near their offices. Many of the most experienced lawyers in the entire legal services program are found in the centers. All staff must be well versed in their particular speciality and have litigative and other representational skills and experience before they can be considered for a position.

The current staff of the Center on Social Welfare Policy and Law is a good illustration. It includes three of the acknowledged welfare experts in the country. These attorneys have a combined sixteen years of service at the Center. All three have taught welfare law courses at leading law and social work schools and have litigated cases before major Federal courts. One worked in the field for many years in the Office of General Counsel of HEW before joining the Center. A recent staff addition was the Managing Attorney of the Law Reform unit of MFY Legal Services in New York City for over 3 years before joining the Center. The most junior member of the staff graduated from Columbia Law School at the top of her class while maintaining a permanent part-time position at the Center. The Center staff also includes a social worker, one librarian who has worked at the Center since 1967, and another who transferred to the Center in 1969 from a similar role at the Welfare Law Project at New York University Law School.

III. EFFECTIVENESS

The success of the centers in providing support and back-up to legal services field attorneys, paralegals and other staff in skills and substantive law train-

ing, program management assistance, and representation of clients before courts, legislatures and administrative agencies accounts in large part not only for the reaction to them by those who seek to limit aggressive and professional advocacy but for the strong support they have within the legal services community. The record of the centers is best reflected in their evaluation results.

In the spring of 1973, the evaluation division of the OEO Office of Legal Services ordered an extraordinary evaluation of most of the national support centers. The evaluators were specifically approved by the director of the evaluations, a man openly hostile to back-up centers. They found that the centers were providing excellent support, performing with a high degree of professional competence and responding rapidly and thoroughly to the thousands of requests for assistance from local legal services attorneys. The centers were found to be operating completely within grant guidelines and succeeding in their mission to back-up local legal services programs.

The evaluation teams concluded that this work was being performed in a capable and comprehensive manner. Typical quotes include:

"Insofar as the quality of the support given Legal Services programs is concerned, the latter [Legal Services attorneys] report overwhelming approval of the work product." (Indian Law Back-up Center)

"The [National Consumer Law Center] responds well to the needs of Legal Services attorneys in the field."

"The National Employment Law Project prepares prompt and thorough responses to specific requests for legal advice and assistance from legal services programs. . . ."

"After three days of intensive interviewing and perhaps as many as 60 telephone contacts with offices in the field, the team was faced with only positive reactions." "... attorneys for the Center . . . produced the type of work that one normally associates with the largest and most respected law firms in the private sector." (Center on Social Welfare Policy and Law)

"The [National Housing and Economic Development Law Project] seems to be staffed with talented individuals who are performing an exceptional role in servicing the needs of Legal Services attorneys throughout the United States."

"Within the severe limitations of its size and budget, (the Legal Action Support Project) has accomplished professional and valuable work in surprising volume."

"... every paralegal should have the opportunity to participate in such a training program." (January, 1974) "Never before have we been privileged to observe as dedicated and enthusiastic staff. . . ." (January, 1975) (National Paralegal Institute)

IV. THE NEED FOR BACK-UP CENTERS

Given the appreciable turnover of lawyers in the legal services program, the fact that many have had little or no prior practice experience, the huge caseload per attorney in the neighborhood office and the time constraints under which they operate, the local attorneys must look to the technical assistance, training, support and specialized assistance that the back-up centers provide. For example, from January 1, 1972, to April 1, 1975, the Housing Law Project mailed 5,565 written responses to specific inquiries for assistance from over 300 legal services offices. The number of telephone responses to requests for assistance by this Project was more than double the number of written responses. The Employment Law Project during 1974 furnished 1,061 publications to legal services attorneys; rendered opinion letters in 208 matters; provided telephone advice to legal services attorneys in 366 matters; and participated in 54 conferences and training sessions. The Consumer Law Center answered 717 service requests in 1973, 406 relating to litigation and 311 to legislation. In 1974, they answered 740 requests, of which 427 related to litigation and 313 to legislation. During the last fiscal year, the national substantive specialized support centers received approximately 19,500 requests for services.

The Legal Services Training Program has conducted over 45 training events affecting virtually every field attorney. The National Paralegal Institute has trained over 250 paralegals from the local projects.

Because of the huge caseload which most neighborhood offices carry, the front-line legal services attorney spends the greater part of his or her time interviewing clients and appearing in court. Research time is consequently at a premium. Moreover, legal services seeks to provide full and complete service to all eligible clients. The legal services attorney is not free to represent only those clients he or she wishes. Caseload pressure simply does not permit the comprehensive

consideration and exploration of all potential claims. The back-up centers have helped local programs meet routine client demands and provide professional, high-quality representation by:

(a) assisting in developing litigative and legislative approaches which could meet the legal needs of people similarly situated with similar problems;

(b) developing specialists with expertise in a specific area, such as consumer, housing or welfare law, who could use this expertise to back up the local attorney and assist him or her in representing his or her clients;

(c) developing and training lawyers, paralegals and other staff through training programs and the development of materials in poverty law subjects and skills used on a daily basis;

(d) engaging in long-term planning of approaches and strategy, thus saving legal services attorneys the time and expense of litigating cases founded on misconceived theories or on theories which have little chance of success in court; and

(e) engaging in effective program management training, caseload control, and personnel utilization.

But there are additional reasons which make the specialized assistance of the centers so necessary.

The vital food, clothing, shelter, and other basic needs and conditions of the poor are to a large extent determined by a complex tangle of federal statutes and regulations and complex administrative relationships between state, local and federal agencies. To see that such regulatory and statutory provisions are implemented and administered in accordance with law requires constant attention to changing government regulations and developments. In addition, poverty law is a new and rapidly changing subject. Case law is expanding at such a pace that, in many instances, a poverty lawyer in the field would have little chance of knowing the most recent developments and then applying them to an individual case. There are few privately funded poverty law reporting services, form books or texts. The back-up capability, then, is designed to provide the attorneys in the field with a ready source of information in areas where they would otherwise lack expertise, insure that the general office caseload does not suffer by virtue of heavy expenditures of time and resources with one client's problem, and provide a mechanism for monitoring and maintaining a liaison with the numerous federal and state agencies which have a special impact upon the poor.

An enterprise with 900 local offices, over 2,600 full-time attorneys and 1,200 paralegals serving over 1,500,000 clients a year, and an expenditure of over \$71.5 million annually requires back-up capacity for efficiency and a wise use of funds. This is true whether in the private or public sector. Private law firms specialize in any one or more of a number of fields such as tax, patent, or labor law and within particular firms, individuals specialize and obtain the expertise and experience necessary to provide quality legal counsel. In addition, almost every governmental unit has specialty and appellate sections.

For the poor, whose legal dilemmas are traditionally at a critical state when they finally do seek legal counsel, it is no less important that representation be of the same highly specialized standard as that expected by a paying client or the government. Therefore, the need for such a support capability given the complexity of the problems which face the poor, born of economic deprivation and lack of opportunity, seems obvious.

The importance of these functions was recognized by the Congress. As Senator Mondale stated: "These functions are essential to continued effective performance by legal services attorneys." Cong. Rec. S12926 (July 18, 1975). See also, Conference Report, Cong. Rec. S12932 (July 18, 1975).

V. THE CONTROVERSY SURROUNDING THE CENTERS

Given the need and given the fact that the mechanism created to fill the need has been judged to perform with a high degree of professional competence, it is perplexing and difficult to understand why some desire to alter the present delivery mechanism. Much of the criticism has focused on the involvement of a few centers in cases which, while in some instances were controversial, nevertheless were successful and resulted in great benefit to eligible clients. Indeed, many of the criticisms have been leveled at legal services—not just back-up center—participation in cases which involve a particular viewpoint or ideology. Ironically, back-up center involvement in these cases did not happen in a vacuum but only in response to specific requests for assistance by local legal services pro-

grams and individual eligible clients.¹ In fact, in many instances, the centers have enabled the local lawyers to put the legal interests and claims of the individual clients ahead of any particular viewpoint or ideology.

An examination of the actual record of the centers by the Board will, we believe, refute the allegations that the centers have sought to foment social change or, as former Congresswoman Green said, been on the "cutting edge of social reform." Rather, their efforts are directed primarily toward enforcing present rights and entitlements accorded by federal, state, and local statutes, ordinances and regulations on behalf of indigent clients. In certain critical areas such as in federally funded programs for the poor, centers' efforts have compelled state and local governments to comply with federal statutes and regulations.

The centers have also prevented the filing of unwise or ill-conceived cases and, because of the experience and expertise of their staffs, assured proper professional handling of client problems. By their presence the "back-up centers" have developed a rational process for the resolution of recurring problems faced by clients throughout a state or nationally; created a vehicle to coordinate the efforts of local programs as they respond to client needs; and developed strategies based on traditional techniques which do not overtax the judicial system but seek an orderly and often efficient resolution through the judicial process.

VI. EFFECT OF CORPORATION ACT UPON THE CENTERS

The Corporation Act unless amended fundamentally alters the delivery mechanism by which the critical functions described above are to be performed. Section 1006(a)(3), the principal section referring to the centers, reads:

"[The Corporation is authorized]

(3) to undertake directly and not by grant or contract, the following activities relating to the delivery of legal assistance—

(A) research,

(B) training and technical assistance, and

(C) to serve as a clearinghouse for information."

However, this section, the Green Amendment, does not eliminate all of the programs presently delivering those functions and cannot, even in isolation, be read to do so. The amendment must be taken together with the other relevant sections of the Act: Section 1006(a)(1) on funding of programs providing legal assistance to eligible clients; Section 1006(c) prohibiting the Corporation from participating in litigation on behalf of eligible clients and limiting its participation in legislative and administrative representation; Section 1007(b)(3) prohibiting the funding of private law firms expending 50% or more of their resources and time litigating issues in the broad interests of a majority of the public; and Section 1007(b)(5) on training of attorneys and paralegals. When read in light of these other sections and in the framework of the legislative history, the following pattern occurs.

Clearinghouse

The clearinghouse functions must be done within the Corporation and those people performing these functions must be employees of the Corporation.²

Training

Instruction of legal services attorneys and other staff in specialized topical substantive areas of poverty law (such as welfare, housing, consumer law) must be done directly by the Corporation and not by grant or contract.

However, training which did not involve substantive poverty law and was not a vehicle for communicating general causes and "social engineering" was not the target of the restriction.³ Thus, instruction of legal services field attorneys

¹During the last fiscal year, 72% of back-up center requests came from local legal services programs and 13% from eligible clients or client groups. A good example is provided by the analysis of the participation of the Center for Law and Education in the Detroit bus case which is discussed in the separate document on back-up center charges which we have prepared.

²However, the Act does not require moving the Clearinghouse to Washington or reducing its essential services. The legislative history clearly suggests that the functions could be performed at one geographically centralized location, but this need not be in Washington. See Sen. Nelson, Cong. Rec. S.12923 (July 18, 1974); Sen. Cranston, Cong. Rec. S.12933 (July 18, 1974) and Congressman Perkins, Cong. Rec. H.6552 (July 16, 1974).

³The "training" of concern to those supporting the Green Amendment was that involving substantive topical areas. Training in the procedural skills of lawyering was of no concern to those supporting the Green Amendment. See remarks by Congressman Quie, Cong. Rec. H.2953 (May 16, 1974); Senator Cranston, Cong. Rec. S.12933 (July 18, 1974); and Senator Brooke, Cong. Rec. S.12927 (July 18, 1974).

and paralegals in case-handling skills could be undertaken by grant or contract as could the instruction of project directors, office administrators and supervising attorneys in the techniques of management and administration.

This program management training is not related to the delivery of legal services within the meaning of section 1006(a) (3). As Senator Cranston noted: "Of course, the corporation would not have this problem (of providing its own training and technical assistance) with regard to acquiring the necessary expertise in such management areas as project director training, board training, planning procedures, office supervision, office paperwork control, ethical supervision, personnel practices and other assistance in techniques or management and administration because these are not concerned with the direct delivery of legal assistance by the litigating lawyers within the meaning and intent of Section 1006(a) (3). The Corporation can thus make new grants or contracts to continue these services in carrying out the purposes and provisions of the Act." *Con. Rec. S.12933* (July 18, 1974).

In addition, Section 1007(b) (5) of the Act, while not a clear signpost, implies that grants and contracts for lawyer and paralegal training are authorized so long as such training does not espouse views of social change or foment social conflict. This section does not suggest whether such training is to be done by individual projects or by national training programs. However, the inefficiency of funding each project to design and plan its own training, either by hiring trainers or by using overburdened staff, leads to the conclusion that national training programs are consistent with what Congress had in mind.

Technical Assistance

The technical assistance functions are subject to a similar bifurcation. The design, planning and dissemination of information concerning litigation tactics and strategy relating to specialized substantive areas of poverty law would have to be carried out by the Corporation "in-house." However, assistance in program management administration, planning procedures, office supervision, office paperwork control, ethical supervision and personnel utilization could be performed by independent entities under grants or contracts.

Research

The research functions of the centers involving the preparation of topical updates, model briefs and legal memoranda on substantive or procedural questions, manuals, newsletters and handbooks, the identification of legal issues, the development of litigation strategy and tactics and legislative and agency analysis would have to be carried out by an "in-house" operation. However, the substantive or procedural research and the relevant background and evidentiary material developed in the course of furnishing legal assistance with respect to particular clients could be performed by programs funded by grant or contract. The representational functions of the present centers, including their litigation and participation in legislative and administrative representation on behalf of eligible clients could not be done by the Corporation or its employees.

It is important to understand why this curious and mandatory separation of functions is so. Section 1006(c) (1) prohibits the Corporation from litigation on behalf of clients other than itself, and Section 1006(c) (2) prohibits the Corporation from providing legislative representation except in connection with legislation or appropriation directly affecting the activity of the Corporation. See *Conference Report*, p. 22. Interpretation of this by both Senators Nelson and Cranston (*Cong. Rec. S.12933*, 12923, July 18, 1974) and Representatives Hawkins and Steiger (*Con. Rec. H.6555* and 6556, July 16, 1974) uniformly stated that legal assistance activities would be carried on only by legal services programs providing services directly to clients. See also *H.39561*, May 16, 1974, Congressman Meeds.

The original conference report, however, clearly envisioned study of all functions of the back-up centers, including the co-counsel functions, and the functions of providing specialized litigation. Thus, the definition of "research" in the *Conference Report* of May, 1974, included all activities of back-up centers. Of course, nothing in the original House-passed bill, nor in the final Act, prevents the Corporation from funding legal services programs with national, state, or regional scope or providing specialized assistance so long as those programs represent eligible clients directly. It was also clearly recognized by the conferees that under the Act the Corporation could not provide any legal assistance. See Congressman Meeds, *Cong. Rec. H.39561* (May 16, 1974). Likewise, the original House Report realized that the counsel and co-counsel functions of back-up centers were funded under section 6(a) (1) of the House bill, the provision for funding

legal services programs representing eligible clients, and not solely under section 6(a)(3), the research, training, technical assistance and clearinghouse provision. See House Report, p. 11.

The July, 1974 addendum to the May, 1974 Conference Report clarifies the situation by omitting any reference to "research in connection with the provision of legal assistance to eligible clients" and omitting from the list of functions to be undertaken directly only by the Corporation the words "specialized litigation." Thus the conferees did not intend to prevent the Corporation from funding, by grant or contract, projects providing specialized representation. Statements by legislators in both houses make this distinction clear.

Congressman Quie, for example, stated that "[t]he only grants or contracts which now can be made are those for the legal advice representation to specific eligible clients—not general causes—having specific need of legal counsel, and not for any general legal research, training, or information service." Cong. Rec. H. 6553 (July 16, 1974). Congressman Steiger echoed these sentiments stating that "this new provision (the Green amendment) will not inhibit our local, state and national legal services offices from providing their clients with excellent legal assistance, regardless whether such offices devote their attention to general or specialized services." Cong. Rec. H. 6556 (July 16, 1974).

In the Senate, Mr. Helms originally expressed the view that "the purpose of this (Green) Amendment is to see to it that funds available for aid to the poor are assigned to pay for legal representation and assistance, rather than for developing exotic social reform projects. . . ." Cong. Rec. S. 967, Jan. 31, 1974. In Senator Case's view, the legislation did not "alter the authority of the Corporation to fund programs serving specific client groups or with the capacity to carry on complex litigation or administrative representation on behalf of eligible clients at the State or National levels." Cong. Rec. S. 12927 (July 18, 1974). See also Senator Tunney, Cong. Rec. S. 12947; Senators Hughes and Mondale, Cong. Rec. S. 12949; Senator Kennedy, Cong. Rec. S. 12954; Senator Williams, Cong. Rec. S. 12957; Senator Cranston, Cong. Rec. S. 12933. Thus, the Act draws a sharp distinction between litigation and non-litigation functions.

To assist in understanding the effect of the Legal Services Corporation Act on the present support center functions, we have developed an outline, included at the end of the narrative, that attempts to set out which functions can or must be carried out by the various delivery mechanisms.

VII. THE NEED FOR LEGISLATION

The effectiveness of back-up centers is directly attributable to their multifunctional approach to the problems of poor clients. Research, training, administrative, legislative and litigative efforts are all interwoven. The publications of the centers have filled a vacuum in practice and scholarly materials on poverty law issues. For example, the three-volume set of materials on welfare law, published by the Welfare Center; the two-volume *Consumer Law Handbook* and the *Truth in Lending Handbook*, published by the Consumer Law Center; *A Lawyer's Manual on Community-Based Economic Development*, published by the Economic Development Section of the National Housing and Economic Development Law Project; the Legal Action Support Project's manual, *Sources and Uses of Social and Economic Data: A Manual for Lawyers*; the Employment Center's *Manual for Title VII Litigation*; the Education Center's publication *Inequality in Education*; the Indian Law Back-up Center's publication entitled *Indian Law Development*; the National Juvenile Law Center's 614 page practice manual, *Law and Tactics in Juvenile Cases*; and the two-volume *Handbook on Housing Law*, published by the Housing Law Section of the National Housing and Economic Development Law Project—all of which were not written in the abstract, but were based on the expertise of back-up center attorneys acquired in the actual administrative, litigative, and legislative representation of poverty clients. The same kind of expertise has been essential to the development of the high quality, creative and effective training materials of the Legal Services Training Program and the National Paralegal Institute.

Attorneys employed by the Corporation who are prohibited from litigating or providing litigation assistance will not be able to develop the necessary practical expertise and accompanying insight necessary to continue the high quality of such publication and materials. Most of the thousands of requests each year for assistance by local legal services projects arise in a framework perceived by local attorneys to necessitate litigation. Because of the practical experience and expertise of back-up center staffs, local legal services attorneys

can, where appropriate, be steered away from wasteful and inefficient litigative strategies toward administrative and legislative solutions which better serve the needs of their clients. Because of the division of responsibility under the Corporation Act, it is unlikely that such opportunities will arise. The litigation/nonlitigation function split contained in the Act will impede comprehensive representation of clients, to say nothing of hindering the recruitment of top-level, experienced trial attorneys by the Corporation.

The expertise of the staffs in back-up centers is in direct proportion to on-the-job, day-to-day interaction with specific legal issues. It has taken years of painstaking effort for back-up centers to gain the trust and confidence of local legal services attorneys and other staff. They have done so through direct advice on litigative, legislative and administrative matters; training conferences; practice-oriented materials; and monthly bulletins. But most important are the day-to-day contacts on which personal relationships of confidence and trust are built. All of this has been translated into the most cost-effective mechanism for providing specialized assistance to local legal services projects. Quality representation and cost effectiveness do not occur in a strictly research-oriented vacuum. They are brought about by competence in dealing with the issues and in the certain knowledge on the part of line legal services personnel that uppermost in the minds of the back-up centers are the needs of the clients.

Aside from the wasteful start-up time necessary to hire staff, duplicate libraries, and establish contacts, the Legal Services Corporation Act also presents an institutional barrier to the continuation of top-quality specialized assistance to local legal services projects. The functional split contained in the Act will necessarily reinforce "tunnel vision" solutions to the problems of legal services clients. Knowledge gained in administrative and legislative advocacy will not easily be translated to litigative advocacy and vice versa.

In contrast to the present situation, under the Legal Services Corporation Act, local legal services attorneys will be forced to seek assistance from many different sources. One call will be required for litigation advice, if indeed it is available; another for research; a third to seek advice on alternative administrative and legislative solutions; and a fourth to resolve any conflicting advice and research products. After the last call, any doubts must be resolved as to whether the advice and assistance given by the Corporation attorney are based on sufficient trial experience and expertise in the field. Clearly, this is not a mechanism to assure high-quality, specialized assistance in the most cost-efficient manner.

There are also two serious administrative problems which the Corporation must address if it is to assume the back-up functions. The history of the creation of the training and other support centers reflects the notion that each area of specialization, whether training, substantive law research, or technical assistance, could best be handled by a separate group of experts focusing on one mission. Experience has shown that the divisions between centers are rational and that the separate entities are able to coordinate when necessary. The subject matter divisions tend to follow the specialization practices among attorneys generally. For the Corporation to preserve the value of separate responsibilities inherent in the current separation of subject matters, would require an extraordinarily complex administrative structure, particularly if the value of separate Boards knowledgeable in each subject area is to be preserved.

The transition stage will also pose difficult problems particularly because the Corporation must continue present services without interruption until it has developed the capability of effectively providing back-up.⁴ In executing the absorption of some activities of the support centers, the Corporation could designate the employees of a support center as corporate employees, leaving them physically in place and relatively undisturbed, or it could physically transfer staff and responsibility into the Corporation's offices. In either case, many employees of the present support centers will be unwilling to become Corporation employees. In the latter case, since it is unlikely that even those staff of support programs who are willing to work for the Corporation will wish to relocate, the Corporation would need to create its own in-house staff before accomplishing the transition. Some provision would then be necessary for an orderly transition of materials,

⁴ As Senator Nelson stated:

"Since these functions are of extraordinary importance to Legal Services offices, there should be no disruption in the provision of these functions. . . ."

See also, Congressmen Perkins, Hawkins, Stelger, and Meeds and Senators Cranston, Nelson, and Case, Cong. Rec. H. 6554, 6555, 6556 (July 16, 1974) and S. 12923, 12927, 12933 (July 18, 1974).

records and know-how. It is difficult to imagine such a transition without substantial loss of momentum in the support programs.

The Board of Directors of the proposed new Corporation should be given the authority to decide the most effective means of providing legal services to the poor, including the authority to continue utilization of the present centers where it determines such services are needed. Its ability to do so should not be precluded by a legislative mandate arrived at without reference to the record of accomplishment. This area is most appropriate for the thoughtful exercise of administrative discretion rather than hapless obedience to statutory fiat, where such fiat would eliminate programs having a history of effectiveness.

Precipitous dissipation of the capabilities of the centers, painstakingly developed over years of effort, would be a serious setback for the legal services program and leave the corporation without use of one of its most vital resources.

Before the Congress is H.R. 7005, a bill which restores the original back-up center language of the original 1973 Administration bill. Under H.R. 7005 the Corporation is given authority to undertake directly or by grant or contract the back-up center functions. This legislation is essential to restoring to the Corporation the discretion and time to design the most effective delivery mechanism including the option of funding support activities by grant or contract or providing them directly.

VIII. PROBLEMS WITH AN IN-HOUSE CENTER

Though H.R. 7005 gives the Corporation the discretion to establish an in-house operation for some back-up center functions, and thus should be supported by the Board, there are substantial concerns mitigating against such an "in-house" mechanism. A Corporation-run center or series of centers will be far more subject to centralized control over their activities and bureaucratic pressures toward conforming their representation strategies to the views of the Corporation officers and Board. Controversial cases and clients might also be shunned because of fears, whether real or perceived, of identifying the Corporation with the issues or clients involved.

A difficult situation could also arise in matters concerning representation of clients in dealings with the Federal government, where clients and local attorneys would both be distrustful of the Corporation's lawyers' freedom and independence to provide neutral and unbiased assistance and act in a true co-counsel, lawyer-to-lawyer relationship. There is also a serious potential for a conflict of interest between any Corporation-run center and the Federal agencies before whom the center would appear. Such a center might well be subject to political pressure far greater than the individual, geographically diverse centers, thus threatening the long, arduous effort to separate the professional provision of legal services from politics and partisanship.

Other difficulties arise should the Corporation wish to undertake training and technical assistance directly. The training and technical assistance programs have utilized legal services project directors and staff attorneys to observe and critique their training sessions. This process has enabled the training and technical assistance programs to improve techniques and procedures and provided a mechanism for assuming some accountability of them to the local projects they are set up to serve. However, because the Corporation regulates and funds local programs, a local program's director or staff would be inherently inhibited from providing critiques and evaluation of Corporation-run training and technical assistance programs.

Moreover, the training of and delivery of technical assistance of project directors, office managers, supervising attorneys is, at least to some extent, dependent upon the circumstances permitting a full and complete critique of a trainees program or staff evaluation without fear of sanction from the funding source. In addition, management training necessitates frank discussion and comment upon the procedures and policies of the funding sources and its employees. The Legal Services Training Program, for example, found it essential to exclude OLS administrators from attending portions of the training sessions because the OLS presence inhibited free discussion about a program's own weaknesses and shortcomings as well as about OLS procedures, practices and personnel. The National Paralegal Institute excluded project directors and staff attorneys, since these sessions focused particularly on the relations of paralegals to their employers. Other constraints can easily be imagined if the Corporation undertakes to train project employees in subjects which touch upon

their status, functions and relations to the employing organizations. Thus it is desirable to keep separate the training entities and the funding and decision-making entity.

Mr. KASTENMEIER. Before questions, Mr. Brooks, I would like to call on Mr. Bernard Veney, director of the National Clients Council.

Mr. VENY. Mr. Chairman, I have submitted a written statement with appendixes, and with your permission, I would like to submit this for the record and make a few brief remarks.

Mr. KASTENMEIER. Without objection, your statement in its entirety and any additions you may have will be accepted and made part of the record. You may continue as you wish.

[The prepared statement of Bernard Veney follows:]

STATEMENT OF BERNARD VENY, DIRECTOR, NATIONAL CLIENTS COUNCIL

Mr. Chairman, members of the committee: My name is Bernard Veney and I am the Executive Director of the National Clients Council. The Council's Board of Directors has instructed me to express its appreciation for your invitation to testify on H.R. 7005. We consider your examination of this proposed amendment to the Legal Services Corporation Act of 1974 an example of the true oversight role which Congress must play if our system of government is to achieve its highest potential.

The bill you have before you may well be one of the briefest ever to be considered by this body—the "mere" substitution of two words for three in the original Act. However, to the low income people of this country, it is an action of considerable magnitude.

The low income users of legal services are represented by the National Clients Council, a non-profit corporation whose membership includes anyone interested in insuring equal access for all to the system of redress of civil grievances. The Council's policies are set by a Board of Directors composed of individuals who serve on the governing bodies of local legal services programs in every section of this country. All of the Board members are non-attorneys and each has been elected by the consumers of legal services in his or her region. Included as Appendix A is a more detailed statement of the make-up of the Client Council's Board.

If the Board members and other clients had been able to testify they would have implored you to report this bill out immediately and unanimously. Clients were not consulted in 1974 before Section 1006(a)(3) of the Legal Services Corporation Act was voted on. Had they been, they would have made sure you understood the need not to limit either the continuation or the effectiveness of those specialized services which support local programs.

The client community recognizes fully that the restrictions of Section 1006(a)(3) were designed to limit the work of those entities doing research, training, and technical assistance. The client community has never understood why this action was necessary. What were the findings which indicated that these centers were not performing in accordance with the legislation which authorized them and the contracts which set forth the scope of their activities?

We are aware of the fact that the support centers acted as co-counsel with local program staff attorneys in a considerable number of cases. Clients Council applauds the record that they have jointly established before federal and state courts in the past. The cases, in order to accomplish the impact they have, must have been well prepared and well presented. However, neither the local program staff nor the support staff decided any of these cases. *The courts decided on the facts and the law in every single case.* Judges make decisions; lawyers do not.

Clients can not believe that there would have been any Section 1006(a)(3) if a substantial number of cases had not been won which upheld the legitimate complaints of the poor. Thus the client community views the Section as another example of governmental negation of anything which in fact provides real services. Poor people don't make neat separations between survival issues. Clients read the papers and they know of the current effort to change the medicaid program, but we know that this is one of the few ways that the poor can get adequate health care. No poor person ever got rich from medicaid. Clients are also aware of the alleged abuses of the food stamp program, but poor people are not college students nor are they making salaries in excess of \$10,000 per year.

It is all interlinked—anything which helps the poor risks being curtailed, defunded, eliminated.

Similarly, good research of cases referred to the "back-up centers" by local programs has led to federal and state legislation with great benefit to the poor. Section 1006(a) (3) says, in effect, bring the research "in-house" where it can be controlled. Clients ask why since Legislation can be drafted by anyone but it *can only be considered and acted on by elected legislators.*

Very often the cases brought by local programs are, in effect, helping the Congress and the legislative bodies at other levels of government insure compliance with the legislative will by executive branch agencies. You are well aware of the often arbitrary nature of the actions of some agencies which selectively apply the legislation you enact, which capriciously withhold funds which you appropriate.

Section 1006(a) (3) also imposes limitations on the training of attorneys. Again, the current Act mandates that such training be brought under control by bringing curriculum development and delivery in-house. Clients know that what makes training effective is not only what is delivered but the general depth of knowledge of the trainer. Put training in the hands of the generalist rather than the specialist and you reduce the transfer of skills to local staff attorneys and paralegals.

Clients are acutely aware that legal services attorneys are not the world's most experienced practitioners. They see the youthful faces of their advocates and note the recent date on the diploma framed on the office wall, but they do not have the option of going elsewhere. We must accept the willing but inexperienced lawyer as the fee we pay for being poor. You cannot correct the age of the attorneys in legal services nor can you give them more experience. You can allow them to receive the best available training regardless of the source. Local programs cannot afford to send staff to specialized training programs conducted by profit making organizations such as the Practicing Law Institute. The tuition cost, the travel money, and the cost of all the lost man-hours combine to preclude this opportunity, which is of course available to private firms' staff members.

How large a price must the poor pay in the quest for access to redress?

Even if the legal services attorney had considerable experience and training in these practical matters, the time needed to thoroughly research them each time a case arose would be prohibitive. This is a factor of great concern to consumers of legal services since every hour spent in research is one less hour which can be devoted to the direct and immediate needs of the clients. Add this to the atmosphere of continuing crisis present in the poor community and to the acute shortage of virtually every resource needed by the attorney and the vital role of the "back-up centers" begins to become obvious. Only these specialized centers, which do not need to deal with such matters as client intake and which have the time and the resources needed to "keep on top" of the ever-changing laws and regulations can provide the support necessary for the legal services programs to effectively represent its clients.

The effectiveness of the "back-up centers," currently constituted, in delivering this support becomes apparent with even the most cursory examination of their activities. Included as Appendix B is a compilation of some of the activities of the National Senior Citizens Law Center in litigation and legislative areas during the first six months of 1975. It should be noted that the list is not exhaustive of the activities undertaken by this center. It is also, of course, only one of the centers. I think you will agree that their work is impressive and that it adds substantially both to the abilities of the local programs to represent their clients and to the general direct service of clients. I am also sure that you are aware of the fact that the evaluations of all the "back-up centers" are available and that each center can provide you with copies of other similar periodic reports. If you are not already convinced, we are sure that your review of these materials would persuade you of the considerable impact that the centers have had on the client community.

There remains yet another unanswered question which is perhaps at the center of the immediate controversy and to which the proposed amendment speaks most directly. That is, why should the services rendered by the "back-up centers" not be performed "in-house" by the Corporation? We see two basic reasons why such a move would severely limit the effectiveness of these services. The first of these is perhaps better developed by the centers themselves, but should be mentioned. As you know, the Act precludes litigation by the Corporation on behalf

of clients other than itself. Thus, moving the support activities in-house would eliminate the valuable co-counsel support which has long been provided by the "back-up centers."

The second issue here is of more compelling direct interest to N.C.C. and to the client community as a whole. If support functions are undertaken directly by the Corporation, all hope for meaningful client input in the establishment of priorities, the allocation of resources, and the general policies of these centers will be lost.

Poor people are not rich people who have lost their money. The life of the client is one of constant dealing with one survival issue after the other. When a legal problem arises it is not a subtle intrusion to be dealt with through the use of a preestablished pattern. For the poor the problems taken to legal services are, in the main, survival issues raised to crisis proportions which require a total investment of physical and emotional energy. The cases which reach the "back-up centers" cannot be dealt with as one would a text-book example. Legal services for the poor, at any level is not amenable to the form or substance of providing counsel to a corporation or resolving single issue problems of an individual in temporary crisis.

Currently, members of the client community serve on the governing boards of almost all of the "back-up centers," include, to mention a few, the Center for Social Welfare Policy and Law, the National Senior Citizens Center, the National Employment Law Project, the Welfare Back-up Center, and the Migrant Legal Action Program. In all of these programs, clients are part of the policy making apparatus. While they do not, of course, have a roll in the day-to-day operation, these boards evaluate the overall performance of the centers and have the power to remove an errant or inappropriately functioning Director.

Our experience indicates that wide expertise is needed in this kind of policy making role. The obvious needs are for expertise in litigation, research, negotiation and other forms of advocacy. However skills in supervision and overall administration are also required. The better programs also have the "in-house" capacity to enlist the active participation of the various organized bar associations; are able to secure funding from private sources. The superior programs have all these things plus an on-going mechanism for staying abreast of the ever-changing needs within the client community. These programs determine how to allocate scarce resources not on the opinion of "outsiders" as to how it ought to be but rather on how it really is. They also perform on-going training of staff to insure maximum understanding of and communications with those who staff serves. Further such programs conduct on-going self evaluations from the perspective of adherence to goals, legislation, etc., as well as client satisfaction. N.C.C. strongly believes that the experience of the last 10 years of legal services delivery establishes the fact that all attorney or all client boards cannot hope to provide the expertise needed. It is the blending of the skills each group brings which makes for sound decision making and the delivery of high quality relevant services.

The client community hopes that the consideration of HR 7005 signals the intention of this committee to watch closely the activities of the Legal Services Corporation. In fact we would hope that you will review with considerable care the regulations issued by the Corporation to insure that the clients who are the consumers of legal services are appropriately and adequately represented on all of the bodies receiving funding under this Act.

Low income communities have seen too much money appropriated for its benefit go into the hands of the non-poor. We are skeptical about the willingness of many local programs to do the will of the Congress and provide not just representation but services equal to or better than those provided by the loan companies, the slumlords, the manipulative operators of some nursing homes, and even some of the agencies of government which seek to deprive the poor of money, rights, or due process.

We ask that you examine *Fuentes v. Shevin*, 407 U.S. 67 (1972), and recognize what this barrier to illegal seizure of property means to clients. Or what *Mourning v. Family Publications Service*, 411 U.S. 356 (1973), means in the enforcement of the Truth in Lending activities which the Congress enacted to protect the unwitting purchaser. Consider the impact of the work of the Migrant Legal Action Program in *Galan v. Dunlop*, Civil Action No. 75-1454, D.C.D.C., which seeks to insure that the growers recruit their work force locally before being certified to hire temporary foreign labor. Read at your leisure the publication of the National Senior Citizens Law Center *The Santa Cruz Story—Older People*

Serving Older People In A Legal Setting. Imagine if you will what such a manual means both to the communities interested in establishing improved services for the elderly and to the senior citizens who could be employed as para-legals in such a program, and lastly consider what it would mean to the elderly poor who currently go unrepresented.

All of this and much much more are the work of the "back-up centers" as they now exist. The client community wants to see such vital services enhanced by the further development of the "centers" through the experience gained over the past years. We do not wish to risk losing the specialized skills and the invaluable community experience through the process of bringing the support functions "in-house" when there is no valid reason for this action to be taken.

Clients, National Clients Council, and those who believe in the principles of the Act hope that you will restore the opportunity for continuation of this fine work.

Thank you.

APPENDIX A

BOARD OF DIRECTORS

The Bylaws of N.C.C. call for a Board consisting of twenty-nine (29) persons. Currently, there are nineteen (19) people actually on the Board. The following brief descriptions of some of them will indicate the breadth and depth of experience and knowledge which they bring to the Council.

Maryellen Hamilton, (New Orleans, La.)—was the founder and, for several years, the driving force behind the Council and she still serves on its Board. Along with George Moore and others, she at a meeting of several hundred members of the National Legal Aid & Defender Association seven years ago pressed for client representation in legal services at the national level. They felt that no matter how strong clients and client representatives might be in local programs, nothing significant would be gained until there was a strong centralized voice. A body which could gather the scattered clients into a collective force which could impact both the legal services community in general and, specifically address the negative drift of the program which they saw occurring at that time.

Ms. Hamilton was eligible to receive legal services then and she still is. She was a fighter then and she remains committed to the struggle now. In New Orleans, her many activities include service on the board of the local L.S.P. and on the Housing Authority Advisory Committee and she currently is on the Mayor's Juvenile Task Force and the Governor's Childhood Development Commission. She is also on the Executive Committee of the National Legal Aid & Defender Association's Board of Directors.

George Moore, (New York, N.Y.)—as indicated above, is also a person who has long worked for and with legal services. He first became involved as an elected client representative on the governing board of one of the local corporations funded through CALS (Community Action for Legal Services). When he became Chairperson of that local corporation board, he became, under CALS Bylaws, a member of the CALS governing body. Mr. Moore subsequently became Vice-Chairperson and, in February, 1975, Chairperson of CALS, a post he currently holds.

CALS is the single largest grantee of the Office of Legal Services, receiving more than \$5 million annually. There is no reason to suspect that this level of funding will not be continued by the Corporation.

Bernard Henault, (Island Pond, Vt.)—A member of the Board of Vermont Legal Aid and himself eligible for legal services, Bernie is the President of a state-wide coalition of self-help organizations, the Vermont Low-Income Advocacy Council. He spends much of his time traveling through Vermont and New England working for the rights of the poor.

Mary Louise Butler, (St. Louis, Mo.)—has been on the Board of the Legal Aid Society of the City and County of St. Louis. She also serves on that city's Urban League Board and, among many other activities, has been one of the Directors of the Advisory Council to the Human Development Corporation of Metropolitan St. Louis.

Ms. Butler is so active in community affairs that she was recruited as a VISTA volunteer when she was 62 years old—and she remained in that program for four years.

Tony Romero, (Pueblo, Colo.)—has been active with Clients Council since its inception and also serves on the State Advisory Board to LEAA. He has been involved in areas as diverse as education, housing, youth, the elderly, and the

handicapped. He currently devotes much of his energy to the Mexican American Service Agency (MASA) and Title I activities.

Willie Lawson, (Centralia, Ill.)—was elected by the state-wide Illinois client council to be its chairperson three years ago. He serves on the multi-county Land of Lincoln Legal Assistance Foundation, is a member of the Governor's Conference on Courts Committee, and is chairperson of the Black Labor Area Council.

Virginia Stevens, (Elizabeth, N.J.)—serves on the Board of the Union County Legal Services Corporation. Her community activities range from involvement in the local parish council and the Girl Scouts of America, to local politics and community action agency's Board; Mrs. Stevens was a founder of the Head Start program in Elizabeth.

APPENDIX "B"

ACTIVITY REPORT—NATIONAL SENIOR CITIZENS LAW CENTER

IV. Litigation Assistance

A. CASE

Shaw v. Weinberger, Federal District Court, North Carolina, No. C-C-74-105. *Issue*.—Validity of practice which limits SSI emergency advance payments to three categories of impairment and which fails to make presumptive disability determinations in advance of final determinations.

Legal Services Program Assisted.—Legal Aid Society of Mecklenburg County, 6th Floor, Professional Services Center, 403 N. Tryon Street, Charlotte, North Carolina 28202.

Status.—Pending upon cross-motions for summary judgment following an order of the court directing the defendant to make a report concerning improvement of the defendant's procedures.

NSCLC Participation.—NSCLC drafted the pleadings, briefs, and participated in argument of motions for summary judgment.

B. CASE

Harrison v. Crowell, Federal District Court, Central District of California, No. 73-1402-RF.

Issue.—Compliance by trustees of the Southern California Construction Laborers Pension Trust with their duty to formulate reasonable eligibility criteria.

Legal Services Program Assisted.—Legal Aid Foundation of Los Angeles, 2301 South Hill Street, Los Angeles, California 90007; California Rural Legal Assistance, 126 West Mill Street, Santa Maria, California 93454.

Status.—Pending upon defendants' motion for summary judgment set for argument in September, 1975.

NSCLC Participation.—NSCLC assisted in drafting the initial complaint and wrote memoranda in opposition to motions to dismiss by several defendants; that pleading and briefing formed the model for subsequent appearances by intervenors. NSCLC has also conducted all the extensive discovery done on plaintiffs' behalf.

C. CASE

Oliver v. Weinberger, Federal District Court, Northern District of California, No. C-74-1416-SC.

Issue.—Constitutionality of Social Security Act provision denying to divorced husbands of fully insured individuals benefits equivalent to divorced wives of fully insured individuals.

Legal Services Program Assisted.—American Civil Liberties Union Foundation, 22 E. 40th St., New York, New York 10016.

Status.—Case is at issue and in the discovery stage; the court denied a motion of the wife for intervention, although granted leave to file an amicus brief.

NSCLC Participation.—The NSCLC drafted and filed the pleadings and prepared the memoranda in connection with motions and the petition for intervention, in addition to participating in discovery activities.

D. CASE

Western Mercantile Agency, Inc. v. Froates, in the Court of Appeals of the State of Oregon, Trial Court No. 33647.

Issue.—Validity of inflexible 21-day limitation upon in-patient hospitalization paid under Title XIX Medicaid.

Legal Services Program Assisted.—Coos-Curry Counties Legal Aid, Inc., North Bend, Oregon 97459.

Status.—Pending on appeal before the court of appeals of the state of Oregon.

NSCLC Participation.—NSCLC provided a legal memorandum to Coos-Curry Legal Aid for use during the trial and, in the pending appeal, filed a brief amicus curiae.

E. CASE

Hannington v. Weinberger, Federal District Court, District of Columbia, No. 74-1015.

Issue.—Whether SSI disability beneficiaries within the grandfathering rollback provision are entitled to a pre-termination hearing.

Legal Services Program Assisted.—Legal Aid Society of the Pima County Bar Association, 30 N. Church St., Tucson, Arizona; Pine Tree Legal Assistance, Inc., Coe Building, Room 53, Bangor, Maine 04401 and Cambridge and Somerville Legal Services, Inc., 188 Broadway, Somerville, Massachusetts 02145.

Status.—Summary Judgment for the defendant was granted and, for various reasons, a decision against an appeal was made.

NSCLC Participation.—NSCLC drafted the pleadings and the memoranda in connection with summary judgment motions and appeared during argument on said motions.

F. CASE

Lix v. Edwards, Superior Court of California, County of Los Angeles, No. NCC-10209-B.

Issue.—Propriety of the pension trustees' interpretation of a pension plan, the effect of which was to deprive the plaintiffs of their pensions; application of the "short term contributory employer" provision to the plaintiffs is contrary to the intent behind that provision.

Legal Services Program Assisted.—San Fernando Valley Neighborhood Legal Services, 13327 Van Nuys Boulevard, Pacoima, California 91331.

Status.—Pending upon a motion for summary judgment filed by the plaintiffs and set for argument August 29, 1975.

NSCLC Participation.—NSCLC drafted the complaint, the summary judgment motion, the memorandum in support thereof, and will actively participate in the forthcoming argument on the motion.

G. CASE

Wilson v. Trustees, Pension Trust for Operating Engineers (complaint drafted and ready to be filed).

Issue.—Propriety of pension trustees giving conclusive effect to Social Security records in finding a break in employment where an ambiguity existed concerning whether the claimant was, during the questioned time, an employee or an independent contractor.

Legal Services Program Assisted.—Fresno County Legal Services, Inc., Brix Building, 1221 Fulton Mall, Fresno, California 93721.

Status.—Appeals procedure within the administrative framework of the trust has been unsuccessfully attempted and suit ready to be commenced immediately.

NSCLC Participation.—NSCLC participated in the appeals procedure and has drafted the complaint.

H. CASE

Tomlin v. Crowell, Superior Court, State of California, County of Los Angeles, No. C-108967.

Issue.—Validity of provision in pension plan restricting circumstances under which pro rata credit can be earned through work generating contributions to a pension plan having a reciprocity agreement with the defendant pension trust.

Legal Services Program Assisted.—Community Legal Assistance Center, 1800 W. 6th St., Los Angeles, California 90057.

Status.—The case is at issue and in the discovery stage, the last step of which was the defendants' answers to interrogatories and objections dated August 1, 1975.

NSCLC Participation.—The NSCLC assisted the Legal Services Neighborhood Office in drafting the complaint, the memorandum in opposition to a motion to dismiss and the interrogatories.

I. CASE

Martinez v. Weinberger, Federal District Court, Central District of California, No. CV-75-1651-RJK.

Issue.—Constitutionality of Social Security Act provision terminating benefits of fully insured individual upon deportation under specified circumstances.

Legal Services Program Assisted.—International Institute of Los Angeles, One Stop Immigration Center, 1441 Wright St., Los Angeles, California 90015.

Status.—Complaint filed May 15, 1975 and, by stipulation, the defendant has until September 26, 1975 to file a responsive pleading.

NSCLC Participation.—The NSCLC performed the background research necessary to formulate theories and drafted the complaint.

J. CASE

Deutsch v. Army and Air Force Exchange Service, Federal District Court, Central District of California, #752928.

Issue.—Whether an employee of a federal non-appropriated fund activity can be involuntarily retired at age 62, pursuant to a pension plan, consistent with the Federal Age Discrimination in Employment Act of 1967.

Legal Services Program Assisted.—California Rural Legal Assistance, 126 W. Mill Street, Santa Maria, California 93454.

Status.—The complaint was filed August 28, 1975.

NSCLC Participation.—NSCLC provided technical assistance in the nature of research and in complying with the administrative formalities prerequisite to a suit. The NSCLC also drafted and filed complaint.

K. CASE

Cheney v. Hampton, Federal District Court, District of Oregon (number of cause, unknown).

Issue.—Eligibility of plaintiff for civil service retirement annuity where denial based upon alleged voluntary separation where the plaintiff was forced to terminate employment in the face of unsupported allegations of homosexual conduct.

Status.—Suit filed, awaiting defendant's responsive pleading.

NSCLC Participation.—NSCLC drafted the pleadings, brief in support of jurisdiction, and formulated the theories.

Legal Services Program Assisted.—Legal Aid Service, East County Office, 4420 South East 64th Avenue, Portland, Oregon 97206.

L. CASE

Flonnoy v. Dykhousc, Superior Court of California, County of Alameda, No. 444179.

Issue.—Validity of pension trust provision requiring that a disability pension is payable only if the disability is incurred within 6 months of the last month of contributory employment, where the employee was unable to find employment within the industry.

Legal Services Program Assisted.—Legal Aid Society of Alameda County, 2357 San Pablo Ave., Oakland, California 94612.

Status.—The case is at issue and in the discovery stage.

NSCLC Participation.—The NSCLC provided to the assisted office a form for the complaint and an analysis of legal theories under which to proceed.

M. CASE

McGrath v. Weinberger, Federal District Court, New Mexico, No. 74577-C.

Issue.—Constitutionality of "representative payee" provision in the Social Security Act which authorizes the appointment of such a functionary without a prior procedural due process hearing.

Legal Services Program Assisted.—Northern New Mexico Rural legal Services, P.O. Box 1464, Las Vegas, New Mexico 57701.

Status.—Certified as a statewide class action, motion for summary judgment by defendant denied, scheduled for trial September 15, 1975.

NSCLC Participation.—Initially appeared by way of brief amicus curiae and subsequently participated in briefing all issues thereafter arising.

N. CASE

Mansfield v. Weinberger, Federal District Court, District of Columbia, No. 75036.

Issue.—Constitutionality of SSI provision which does not give individual grants to married persons living apart until 6 months have elapsed following the separation.

Legal Services Program Assisted.—Western Center on Law and Poverty, 1709 W. 8th St., Los Angeles, California 90017.

Status.—Summary judgment motion granted in defendants favor on July 29, 1975. A decision to appeal is currently being considered.

NSCLC Participation.—Formulation of theories and preparation of pleadings and written memoranda were a cooperative venture on the part of NSCLC and the Western Center on Law and Poverty.

O. CASE

Miller v. DePaulo Health Plan, Superior Court, State of California, County of Los Angeles, No. C-122674.

Issue.—Compliance by a private pre-paid health plan with state and federal laws regulating the operation of such plans.

Legal Services Program Assisted.—Community Legal Assistance Center, 1800 W. 6th St., Los Angeles, California 90057; National Health Law Program, 10995 LeConte Ave., Los Angeles, California 90024.

Status.—Complaint filed May 5, 1975 and no responsive pleading yet submitted by defendant; interrogatories have been served upon the defendant.

NSCLC Participation.—NSCLC did extensive research preparatory to formulation of theories and participated in conferences devoted to that end; in addition, NSCLC provided the resources for an extensive factual investigation.

P. CASE

Gadsen v. Weinberger, Federal District Court, Central District of California (Complaint ready for filing).

Issue.—Constitutionality of provision in Title XVIII which permits carriers to make final and binding determinations with respect to contested claims under Part B.

Legal Services Program Assisted.—Legal Aid Society of Orange County, 1932 W. 17th St., Santa Ana, California 92706.

Status.—Complaint drafted and ready to be filed.

NSCLC Participation.—NSCLC obtained a dismissal without prejudice of the suit because it had been improperly commenced, performed the research necessary to reexamine and reformulate the theories, and prepared for filing the complaint.

Q. CASE

McCarthy v. Weinberger, Federal District Court, Western District of Missouri, No. CB121-W-4.

Issue.—Whether the standards for appointment of a representative payee under the Social Security Act are constitutionally overbroad and vague.

Legal Services Program Assisted.—Legal Aid Society of Greater Kansas City, Missouri, 921 Walnut St., Kansas City, Missouri 60106.

Status.—The plaintiff is currently resisting a motion for summary judgment; discovery proceedings have been undertaken, however, by the plaintiff.

NSCLC Participation.—NSCLC has directly participated in the briefing of the various issues before the court.

R. CASE

Commonwealth of Massachusetts Board of Retirement v. Murgia, U.S. Supreme Court, No. 74-1-44.

Issue.—Constitutional validity of state law requiring mandatory retirement of uniformed police officers at age 50.

Legal Services Program Assisted.—NSCLC is appearing amicus curiae in collaboration with the American Association of Retired Persons and the National Retired Teachers Association.

NSCLC Participation.—The NSCLC prepared a brief amicus curiae which has been served and filed with the Supreme Court.

Cardinale v. Mathews, Federal District Court, District of Columbia, No. 74-930.

S. CASE

Issue.—Constitutionality of HEW Regulations allowing reduction, suspension or termination of benefits in certain circumstances; e.g., clerical error, without advance notice.

Legal Services Program Assisted.—Western Center on Law and Poverty, 1709 W. 8th Street, Los Angeles, California 90017.

Status.—On August 28, 1975 the court declared said regulations unconstitutional.

NSCLC Participation.—NSCLC acted as co-counsel and, through its Washington, D.C. office, took care of the procedural formalities.

V. Legislative and Administrative Assistance

1. INCOME MAINTENANCE

a. Assisted William Oriol, Staff Director of the Senate Special Committee on Aging, with the organization of testimony for hearings which were held by Senator Tunney in behalf of the Senate Special Committee in Los Angeles. Subject of hearings was effect of inflation on lives of elderly.

b. Responded to Senator Kennedy's request for comments in connection with his hearings on Administrative Problems in SSI by sending a letter, which, we are told, will be printed in the appendix to the hearings.

c. At the request of Representative Holtzman, commented on her Pension Reform Act amendments (H.R. 2593).

d. Wrote a very brief statement requested in connection with Senator Tunney's hearings in California on Social Security and the cost of living. The subject of the statement was the adequacy of the Social Security escalator provisions vis-a-vis the inflation we are now experiencing.

e. Attended a meeting in Baltimore, chaired by Nicholas DiMichael and Eleanor Bader, to which representatives of various aging and disability interest groups were invited. The subject of this meeting was in part legislative proposals under consideration in the Bureau of SSI in connection with the SSI program.

f. Testified at hearings on SSI held by the Public Assistance Subcommittee of the House of Representatives Committee on Ways and Means.

g. Prepared comments addressed to staff of Senator Harrison A. Williams, Chairman of the Labor and Public Welfare Committee, on the Labor Department's ERISA Information Bulletin 75-1 relating to transactions between a Plan and a party in interest under certain circumstances.

h. At the request of Senator Frank Church, Chairman of the Special Senate Committee on Aging, wrote him a letter expressing the favorable views of NSCLC on his bill, S. 650, which would raise the special minimum benefit Social Security payment provision (42 USC 415[a][3]) to reflect the recent increase in the cost of living and would tie the benefit to future rises in the cost of living.

2. HEALTH

a. Obtained Medicare/Medicaid manuals used in granting and denying claims and other materials necessary in representation of persons having complaints with this program. Obtained these materials under the Freedom of Information Act after many communications with officials in HEW over a period of months. Also obtained a waiver of charges for the duplication of certain of these materials on the basis that this information benefits the general public as allowed under the Freedom of Information Act and HEW regulations implementing the Act.

b. Attended meeting held by HEW where highlights of the Long Term Care Facility Improvement Study were presented.

c. Served as a member of the Los Angeles City Attorney's Task Force on Nursing Homes, January through June, 1975. The task force advised the City Attorney's office with respect to its preparation of A Consumer's Guide to Nursing Homes in Los Angeles, made recommendations with respect to local and statewide legislation to improve nursing home conditions.

d. In response to inquiries from Legal Services attorneys in New Jersey and Texas, assisted with respect to identifying and locating bill to make permanent the 1972 grandfathering of Medicaid recipients whose Medicaid eligibility would otherwise have been lost as a result of an increase in their Social Security benefit.

e. Communicated with Bureau of Health Insurance concerning its time table for issuance of regulations to implement assurance of payment procedures enacted by the Congress in 1972.

f. Responded to request for help in drafting a revised nursing home ombudsman bill for California from the office of State Senator Roberti. Our assistance was quite extensive and included: (1) putting together an informal conference

of nursing home experts in California to discuss the components of an effective ombudsman program; (2) communicating with model ombudsman programs across the country to discover good and bad features of their programs.

g. Responded to request from the staff of Senator Tunney's office to prepare memorandum concerning the effects of inflation on the health needs of senior citizens.

h. Prepared written memorandum for submission to House Ways & Means Subcommittee for hearings that it conducted into selected Medicare subjects.

i. Prepared comments to proposed federal regulations implementing 1972 change in definition of skilled nursing facility services.

3. PROBATE, GUARDIANSHIP

a. The National Senior Citizens Law Center has continued to provide active support of those elderly and legal services groups in California supporting AB 1417. AB 1417, which is sponsored by Assemblyman Lanterman, will provide increased procedural safeguards for those persons alleged to be mentally incompetent for purposes of appointing a guardian. Apart from this impact in California, our assistance with AB 1417 has had direct impact in at least two other states. In Delaware, the Public Guardian's office has used AB 1417 as a model in setting out its rules and procedures for operation in the filing of guardianship petitions. In Florida, Florida Legal Services has used AB 1417 in working with interested groups there to introduce similar legislation before the Florida Legislature. AB 1417 has currently been successfully moved out of the Assembly Judiciary Committee, and is currently before the Assembly Ways and Means Committee where it will be heard prior to June 26. The prospects at this point are favorable, and the bill will continue to undergo hearings in both houses in California throughout the summer.

b. Testified before the House Select Committee on Aging, Subcommittee on Health Maintenance and Long-Term Care, regarding legal issues associated with alternatives to institutionalization of the elderly.

4. OLDER WOMEN

a. Met with the staff of the Senate Special Committee on Aging to discuss Social Security issues affecting women in preparation for hearings that they have scheduled on this subject.

b. Met with the staff of the House Select Committee on Aging to discuss legal issues affecting older women in connection with a series of hearings that they are planning on the subject.

c. Pursuant to a decision reached at the December San Francisco meeting of persons interested in women's issues, wrote to the Civil Rights Commission about the special interests of women vis-a-vis the Age Discrimination in Employment Act.

d. Developed a form for registering complaints for the local NOW re: age discrimination in employment. Our purpose was to gather information and statistics.

e. At the request of California State Senator Smith, sent letters of support on his displaced homemakers bill (S.B. 825) to members of the California Senate Finance Committee.

f. Sent "Outline of Legal Issues Affecting Older Women" prepared by Anne Silverstein and Sally Hart Wilson, Staff Attorneys at NSCLC, to a number of people including: House Select Committee on Aging (Used as a research tool for their hearings on Economic Problems of Older Women); Anith MacIntosh, in conjunction with the Urban Institute's current grant from the Ford Foundation for A Women's Policy Research Center; Barbara Resnick Assoc. for a conference in conjunction with Mt. Vernon college on single women of all ages.

g. Met with staff of the House Select Committee on Aging and Senate Special Committee on Aging regarding their hearings on problems of the older woman and with Anita MacIntosh of the Urban Institute regarding their research plan.

h. Spent time talking with Del. Marilyn Goldwater, sponsor of the Maryland Part-Time Opportunity Act and others regarding the Tunney bill and possibility of passage. Also talked to persons who drafted the Private Part-Time Opportunity Act about possible sponsors.

5. EXPANSION OF LEGAL SERVICES TO THE ELDERLY

a. The allocation of \$1 million of \$308 model project monies by the Administration on Aging to finance eleven model projects for fiscal 1975-76 was very much the result of efforts by Senator Tunney (following up hearings held in Los

Angeles entitled, "Improving Legal Representation for Older Americans," on June 14, 1975—which hearings were worked on extensively by the National Senior Citizens Law Center staff and staffs of Senator Tunney and the Senate Special Committee on Aging), and the National Senior Citizens Law Center. After these hearings were held in Los Angeles, Senator Tunney introduced an amendment to the Older Americans Act Model Projects appropriation of \$1 million specifically to be used for the funding of legal services programs. NSCLC staff was intimately involved in working out the details required to see that this \$1 million appropriation, which was passed by the Congress (but without a specific line item talking about legal services) be ultimately used by the Administration on Aging for the funding of legal services model projects.

b. NSCLC has played a major role in the development of Federal legislation (in the form of 1975 Amendments to the Older Americans Act) which will, as has been said by several members of the Administration on Aging, see a legal services component funded out of every Area Agency on Aging across the country within the next year or two. This legislation is presently in Conference. Both Senate and House versions provide a major thrust through the Older Americans Act and ultimately through all Area Agencies on Aging for the provision of legal services to the elderly across the country and for the training of attorneys and paralegals to provide these services. NSCLC staff provided key input and impetus to legislative committees at every stage of the game in seeing that this legislation became a reality. Thus NSCLC staff testified before Congressman Brademas' Subcommittee on Select Education, and before Senator Eagleton's Subcommittee on Aging of the Senator Labor and Public Welfare Committee. The Senate and House Committee reports contain language and information provided and worked on by NSCLC staff.

c. The California State Legislature has asked that a study be done on possible sources of funding for California Legal Services programs wishing to serve the elderly. Peter Coppelman obtained a grant from the State Legislature for purposes of conducting such a survey. We spent considerable time with Peter explaining the various funding alternatives of which we were aware, and also gave him full access to our entire files on this matter.

d. Participated in several conferences on H.R. 7005 which would authorize the Legal Services Corporation to fund back-up centers (such as NSCLC) by grant or contract. Advised on the initial drafting of the bill and have worked closely with the House Judiciary Committee staff on background information and the scheduling of hearings. Have also conferred with Senator Cranston's staff and with Chairman Roger Cramton of the LSC on the subject.

6. AGE DISCRIMINATION

a. Wrote requested letter to California Assembly Business and Professions Committee in support of mandatory retirement bills, AB 1737-8.

7. CONSUMER ISSUES

a. Wrote requested comments to FTC on proposed prescription drug legislation.

b. Commented on proposed Hearing Aid reform measure, California S.B. 173.

c. On request of Senator Frank Moss, made comments on S. 670, The Consumer Fraud Act, on the bill's effect on the elderly poor, as well as on technical features of the bills.

d. On request supplied the staff of the Subcommittee on Government Regulation, Senate Select Committee on Small Business, with material relating to abuses of the hearing aid industry vis-a-vis the elderly poor (collected in connection with S. 670, the Consumer Fraud Act) and submitted possible questions to ask officials of the Federal Trade Commission relating to their regulation of the industry.

8. WASHINGTON ASSISTANCE

a. The Washington weekly newsletter has been a major and time-consuming undertaking in this field. It lists all known and anticipated future legislative hearings of interest to the elderly and all items of interest to the elderly appearing in the Federal Register. It also includes Federal legislative and administrative news items in its field.

9. MISCELLANEOUS

a. Sent a letter to the Civil Service Commission regarding the controversy between it and the Social Security Administration over the status and classification of SSI judges.

b. At the request of Senator Tunney, wrote him a letter expressing the favorable views of NSCLC on his bill, S. 792, the proposed "Part-Time Career Opportunity Act" which, in general, would gradually restructure 10% of the Federal Executive Branch positions into part-time positions. The bill passed the Senate on June 23 and is now before the House Post Office and Civil Service Committee.

c. Talked with Dan Schulder of the Pennsylvania Governor's Office, who was concerned with the coordination of Title XX programs with Title III and VI of the Older Americans Act. Conversation followed up with various AA's of Congressmen who had introduced legislation to ameliorate this problem.

LSC

Legal Services Corporation Act

Statement of Findings and Declaration of Purpose

The Congress finds and declares that—

"(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

"(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

"(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice;

"(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

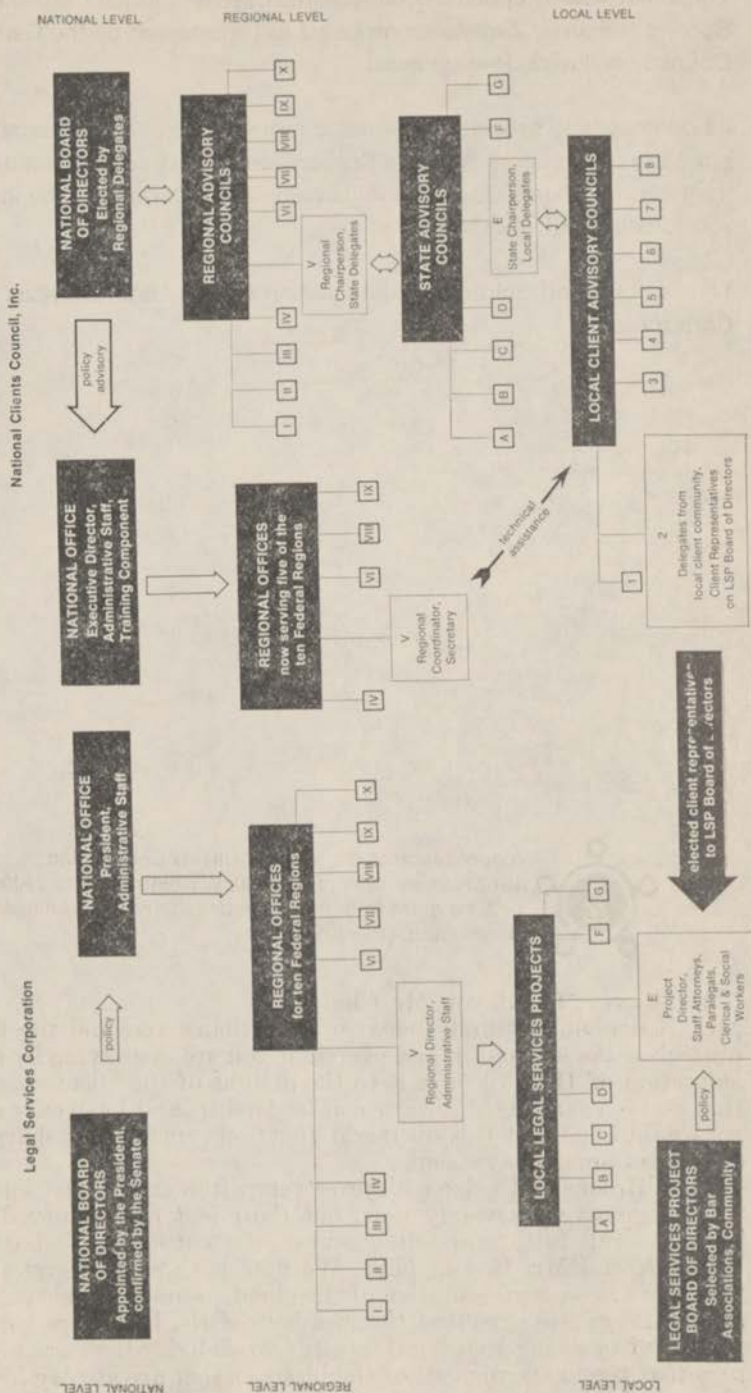
"(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

"(6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession."

NCC

National Clients Council, Inc. (a non-profit corporation directly funded by the Community Services Administration) is a community oriented, client advocate group whose central purpose is to insure the delivery of appropriate, relevant, quality legal services to all current and potential clients of the Legal Services Corporation. Its major functions are: (1) to help organize client advisory councils at the local, state, regional, and national levels of the Legal Services Program; (2) to act as liaison between and offer technical assistance and information to client community groups and Legal Services Programs; and (3) to organize training sessions to help clients function as meaningful participants in decision-making on LSP boards of directors.

STRUCTURAL CHART OF THE LEGAL SERVICES CORPORATION
AND THE NATIONAL CLIENTS COUNCIL
IN THE UNITED STATES OF AMERICA



This chart was prepared by the National Clients Council for use at the Second National Conference on Legal Aid sponsored by the Canadian Council on Social Development.

Its purpose is to provide a schematic representation of: the existing structure of the Legal Services Corporation and its constituent agencies; the National Clients Council and its component parts; and the inter-relationships between them.

This is not an official organizational chart for the Legal Services Corporation.



A publication of the National Clients Council, Inc.,
1910 K Street, N.W., Suite 400, Washington, D.C. 20006,
under a grant from the Community Services Administration,
Washington, D.C. 20506.

Mr. VENET. Thank you, Mr. Chairman.

Mr. Chairman, my first endeavor is to thank you and the subcommittee for the leadership and oversight you are displaying by the consideration of H.R. 7005. It is to the delight of the client community that you have taken this measure of leadership, and I can only say that we would hope that this oversight function continues as sharply and acutely as you display it here.

John Brooks and I don't disagree very often and I don't know that we disagree very severely now, but the client community does not have the full faith and reliance upon the corporation's board that NLADA and Mr. Brooks have. We note with some regret the fact that there is no representative of the client community on that board, and while we are sure that the members of the board are very, very interested in seeing that legal services are delivered, we are not at all sure that they recognize all of the interests that are at play here. The absence of a poverty person on their board or the absence of a woman

on that board causes us considerable concern. So, I would encourage the continued oversight of this particular committee.

The second point that I would like to make is that the backup centers have been, I think, roundly criticized, because they have been successful. I think that if they were annoying little flies, that appeared upon the window pane of several people, they would be brushed aside and no concern given. But, when they have gotten into the pocket-books of large corporations, when they have unsettled a number of people who have been heretofore allowed to do exactly what they wanted to do, then criticism comes, and I would remind this body that no legal services attorney, no backup center attorney has ever decided a case in court. A judge decides that. No backup center has ever passed a single bit of legislation. Elected representatives such as yourselves pass the legislation. You, like the judges in the court, find merit in what the backup center attorneys and local project attorneys have brought before your attention. In finding merit in it, you decide to take action.

I do not know how we of the client community can do anything but applaud the backup centers and local programs, for their past actions.

I would also like to bring to the subcommittee's attention the fact that while there is a good deal of discussion about litigation over the last 2 days of the hearings, there is more at stake than that. I would like to just bring to your attention the number of paralegals who are involved in the legal services programs, and with the backup centers, and these are not the paralegals who have completed college or are in law school. These are, in fact, in the main, people from the poverty population who have a special expertise because they know the language of the ghetto and they know the language of the rural communities and they know how to get around. These paralegals are given special training through paralegal institutes, for examples, and my concern is not only are they given training which allows them to give good legal services, but that this training can, because of the specialized nature of the National Paralegal Institute and the legal services training program at Catholic University and other training entities, lead to career development, so that we are talking about a ripple effect coming from the involvement of at least two of the backup centers.

And the last point that I would like to make is the point regarding why the corporation should not do this in-house. I don't know whether I can really be persuasive to you on this particular point, because my reason for saying that the backup centers should not be brought in-house is it brings a loss of client input which is now present in the backup centers. I have struggled with my staff to try and come up with an analogy for you and the best we can do is to remind you, I guess, that you would not attempt to run any election, would not attempt to run your offices without input from every segment of your constituents. We think it is impossible to run a good legal services program at the local level or at the level of a backup center without the constant input of the constituency that is affected, that is, the client community. Things change much too rapidly in the client community for anyone to say, well, I was out there 3 weeks ago, or I was out there some time ago, and I think I learned this. If the backup centers are brought in-house with a certainty we can say that the opportunity for the client community to remind the backup center that they are going off on flights of fancy or into social engineering,

if you will, or if they go into areas that have no relevance, the client community opportunity to pull them back from that kind of action is going to be gone.

So, I recognize the fact that it is often not the most popular idea to have the consumer sit next to the person delivering the service, I would encourage you to think about the impact, the positive impact, the knowledge and the skill that the consumer, in this instance, the client, brings to the backup center legal services programs.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. Thank you, Mr. Veney, both of you, for brief but very, very useful and appropriate observations to this committee, I commend you both.

I would like to yield to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

Thank you, both of you, for the good comments.

Mr. Brooks. I wonder if we could defang some of this controversy by changing the title. Backup center has become a dirty word around here because of the controversy, and I think we could use some euphemism like a research center, research and development. Is there any way to describe these centers in such a way that it doesn't bring about all the emotions that have clustered around them?

Mr. Brooks. Support center would be one possibility. I would like to take that under advisement, but it is possible some of the personnel more directly involved would have a good thought on that.

Mr. DRINAN. All right.

Mr. Brooks. I think I agree with you that backup center is now a very dirty word in some quarters, and unjustifiably so, in my opinion.

Mr. DRINAN. Mr. Brooks, the members here are very close to the controversy that caused the termination, except Mr. Pattison, the neophyte here. He wasn't here. But you or somebody more objective, what would you say was the principal grievance that the majority had when they voted for the Green amendment?

Mr. Brooks. I think Mr. Veney phrased it very well, and I was glad he brought that point out. I think there were two facets to it. One is the success, and the other is alleged harrassment. The two may go quite closely together. As I see it, that was the most explicit cause for what almost amounted to paranoia on the part of many at the time of the generation of the Act, and I won't go into the rebuttal to those allegations at this point, unless you wish.

Mr. DRINAN. No. But you did suggest or intimate that you know of virtually no abuses. Do you know of any abuses that could legitimately lead to a vote for the Green amendment?

Mr. Brooks. Every so-called abuse that I am familiar with, that I have investigated or read about, I am satisfied was not an abuse, but was a legitimate exercise of the function of a good lawyer in representing his client, which may, to some, have seemed excessive in zeal, but that is very subjective.

Mr. DRINAN. Would you have any specific knowledge of how often or how many centers have intervened in desegregation school cases?

Mr. Brooks. The only instance I know of is—

Mr. DRINAN. Detroit.

Mr. BROOKS. The Detroit situation where, as I understand it, the Harvard Center for Law and Education was called upon by the local counsel in Detroit for assistance and it gave assistance to the extent called upon within the scope of its expertise in the field.

Mr. DRINAN. Could I ask this on another point? Are there any difficulties now when the Community Services Administration funds these things until March 31, 1976, is there any conflict of authority? If it were possible to have another agency fund these backup centers, which there may not be, would that be a serious detriment to the Corporation?

Mr. BROOKS. My own top-of-the-head opinion, not having given it any very serious thought before this, is that it would be unfortunate. It seems to me that this is very much a part of the total job that the Legal Services Corporation is established to do, and if it devolved on someone else to fund it, to oversee it, to control it, it could involve slippage between and inefficiency and lack of effectiveness, I would feel.

Mr. DRINAN. Well, as a very skilled lawyer, do you see any way to get around the language that is in the act? Is there any way to construe that in such a way that there are—that with some modifications, the Corporation could continue these centers?

Mr. BROOKS. That is a tough question.

Mr. DRINAN. Well, you are a good lawyer.

Mr. BROOKS. Thank you, sir.

Mr. DRINAN. You see, you could save us all of the agony of getting this bill through.

Mr. BROOKS. I have given that some thought, and my feeling is, it is not totally educated, I must say, but my belief is that at best it is a doubtful power. I think to me it is not necessarily totally excluded, but I think there would always be a doubt, a shadow, so that if this committee felt that 7005 was not necessary, if the Congress felt that it was not necessary, because the power was inherent already, it just seems to me that would open Pandora's box for problems.

Mr. DRINAN. As I recall, the debate and all the allegations, people said these centers are freewheeling and there are a lot of young lawyers there who can do anything. Can you conceive of a bill of particulars, a bill of rights for these centers, that they may do thus and so, but can't go beyond that? Has this been thought about?

Mr. BROOKS. I can't give you a categorical answer to the last part of that question. I don't know. But I do know that the Corporation is considering the problem of backup centers as one of their major projects which has necessarily given way to more critical immediate problems today. I thoroughly expect that they will, if given the opportunity, come up with guidelines for the operation of backup centers. I hope they will be reasonably liberal, but nevertheless, it seems to me that is certainly a possibility and to my way of thinking a probability.

Mr. DRINAN. I want to thank you for this 30-page memo on the effectiveness of the legal services backup centers. This is extraordinarily good and it will be very helpful in fashioning the report on this legislation.

I want to thank you, Mr. Brooks. I think my 5 minutes are up and I want to thank you for coming and commend you once again for

everything you have done for legal aid. Long before the Nation ever heard of the concept of legal aid, you were there as a pioneer. I thank you.

Mr. KASTENMEIER. The gentleman from New York, Mr. Pattison.

Mr. PATTISON. I thank Mr. Brooks and Mr. Veney for their testimony. I particularly agree with Mr. Brooks that his position is a fundamentally conservative one that attempts to make some kind of reality out of that ideal that we expect each day when we pledge allegiance to the flag, those last three words, "justice for all."

I have nothing else.

Mr. KASTENMEIER. On that hopeful note, I yield to the gentleman from Illinois.

Mr. RAILSBACK. I just want to also thank you and say that I am glad there are still a few Republicans in Massachusetts. I wasn't sure there were any.

Mr. DRINAN. We work together on it.

Mr. RAILSBACK. We appreciate your testimony.

Mr. KASTENMEIER. Mr. Veney, for the record, could you describe for us the National Clients Council and was it, in fact, created and funded by the Federal Government?

Mr. VENey. The Clients Council was created by Federal funding of NLADA at one point in time to assure that there was a client voice in legal services matters. Subsequently that funding was made directly to the National Clients Council and for the last 5 years we have been a separate entity. We are currently funded by the Legal Services Corporation. We are guided by a 29-person Board of Directors, primarily clients of legal services or their elected representatives from all over the country.

Our major thrust is to insure that the technical capacity to make good decisions is part of the clients' communities' bag of skills.

I would like to make just one comment, if I might.

Mr. KASTENMEIER. Of course.

Mr. VENey. I think that Congressman Drinan's request for a bill of particulars which would guide the conduct of the attorneys is a point well taken. I would just like to say that I have found legal service attorneys zealous and dedicated and underpaid, clearly underpaid, and they do not stay terribly long, which grieves the community. We get a good attorney and all of a sudden he seems to be gone. And these are people who wish to remain attorneys and they are guided very closely by the canons of ethics and code of professional responsibility. They do not wish to be disbarred, they do not wish to be dropped before the bar of any State. They watch very carefully what they do and they recognize that they are being scrutinized not only by the client community, by legal services, but more particularly by the organized bar.

Mr. KASTENMEIER. I appreciate that assurance.

Finally, Mr. Brooks, I am wondering in terms of the National Consumer Law Center in Boston, what percentage of its operating revenues derive from what was OEO legal services? To what extent is it dependent upon the Legal Services Corp. for funding?

Mr. BROOKS. I wish I could answer that question, Mr. Chairman. I cannot. My belief is that it is preponderantly Federal money through OEO, CSA.

Mr. KASTENMEIER. Could you speculate what might happen if, in fact, after March 31 of next year, there was no further Federal funding to the Legal Services Corp. for that center? Would it be able to continue in some reduced capacity, or what is going to happen?

Mr. BROOKS. I am not sure that I even want to speculate on that, but if I should, I would surmise that they would have some small amount available from other sources for special projects, but that they would be unable to continue without major financial support from some other source in the areas where they function as general support for legal services projects throughout the country. And funds, I know, are very difficult to get for such projects.

Mr. KASTENMEIER. Well, that concludes the questioning.

Mr. DRINAN. Mr. Chairman—

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. If I may, going back to the question that both Mr. Veney and Mr. Brooks have brought up and I brought up, namely, the conference report on this matter in July 1974, seems to suggest that there might be a way out of understanding, as Congressman Quie said, "The only grants or contracts which now can be made are those for the legal advice representation for specific eligible clients, not general causes." Congressman Steiger echoed those sentiments and said "The Green amendment will not inhibit our local State and national health service offices from providing their clients with excellent legal assistance," and even Senator Helms said he feels the purpose of the Green amendment is to see that the funds available for legal aid to the poor are assigned to pay for legal representation and assistance rather than for developing allegedly exotic social reform projects.

Well, in this document that Mr. Brooks has put into the record, there is insufficient evidence from my point of view, really, to suggest that these centers were not operating completely within grants guidelines and that they were, in fact, as Mrs. Green alleged, developing theories on the cutting edge of society, but rather the facts indicate that they were just asserting statutory rights or Federal rights, or insisting upon the observance of Federal or State guidelines.

I wonder if either of you would have additional material to show that the image of the centers developing exotic social projects is improper, is wrong.

Mr. BROOKS. If I may answer this first, that is an awfully hard thing to pin down with a denial when it is such an amorphous allegation in the first place. I think, as Mr. Veney so well pointed out, a very large preponderance of litigation brought by local projects with the help of HRP, of the backup centers, has been successful, right up to the Supreme Court, and I have a few cases noted here where backup centers were responsible for favorable Supreme Court decisions.

Mr. DRINAN. Mr. Brooks, I think that is the type of thing I am asking for, and I think that at a later time. I would welcome and I think the subcommittee would welcome additional material like that which would dispel this bad image, if you will, of a backup center as a place for agitation.

Mr. BROOKS. We would be glad to do that, Congressman, and I think the other side of that is what Mr. Veney said, that the backup centers and the project lawyers are advocates and they are not social engineers.

You Congressmen are the social engineers, and to a very large degree, what the cases do is bring up the legislation passed by the Congress, regulations adopted by public authorities, and test those, apply them, make sure that the public authority does do its duty under the law as written, as decided by the policymakers, and the results of that are not decided by the backup centers or by the legal services lawyers. They are decided by the judges. And, of course, there are going to be some cases that are lost. Any good lawyer loses a case or two, which doesn't mean, to my mind, that they are frivolous.

Mr. DRINAN. Mr. Veney?

Mr. VENEY. I will be very brief. I heard Mr. West indicated that each of the migrants who was recruited under the contract between his association and the Government of Puerto Rico was given a copy of the contract. In the main, my experience tells me that most of these migrants are illiterate. It is only through the taking of the unpopular cause that the Camden Legal Services project attorneys are, in fact, able to bring to the attention of the Congress the need for new legislation, to the attention of the Government of Puerto Rico, of the State of New Jersey, the fact that for greater protections, and I would remind you of Senator Harrison Williams and his efforts in New Jersey to correct the housing conditions of migrants, to correct the conditions under which children lived in the migrant camps in south Jersey.

It is extremely difficult not to be unpopular if you are taking on an unpopular cause, and I think that it is difficult, as Mr. Brooks has said, to refute the charges that have come up because they are so amorphous, and I suggest to you, and I am not an attorney, so let me throw out a phrase in terms of had all the remedies been looked at, I suggest that we would have seen Legal Services attorneys disbarred by the gross if, in fact, those allegations had been true.

Legal Service programs have been charged with barristry, they have been charged with harassment, they have been charged with any number of things. The American Bar Association, State bars and the courts have held their actions to be proper. In fact the American Bar Association representative supports H.R. 7005. I think that this is as much justification as I could possibly afford you at this moment.

I am sure Mr. Brooks and the staff of NLADA would do it justice, but I suggest the justification may already be a matter of record.

Mr. DRINAN. It is a good statement. In the statement you have given us, it is stated that the centers have also prevented the filing of unwise or ill-conceived cases, and I think documentation on that will be very helpful.

Thank you again.

Mr. KASTENMEIER. Mr. Veney, Mr. Brooks, the committee appreciates your contribution to us this morning.

Mr. VENEY. Thank you, Mr. Chairman.

[Subsequent to the hearing the following letter was received for the record:]

NOVEMBER 3, 1975.

HON. ROBERT KASTENMEIER,
House Judiciary Committee, 2137 Rayburn House Office Building, Washington,
D.C.

DEAR CONGRESSMAN KASTENMEIER: At the time of my appearance before your Subcommittee on October 31 to testify in support of H.R. 7005, several questions

were posed to me which require further response. You were kind enough to agree that my response, in the form of this letter, could be made a part of the record.

1. FUNDING OF THE NATIONAL CONSUMER LAW CENTER (NCLC)

Congressman Drinan inquired about current and potential outside funding for NCLC. At present, NCLC's sole source of funding is the Community Services Administration grant which expires on March 31, 1976. Although a few applications for small grants are now pending, if NCLC were to lose its legal services funding today, it would go out of business.

2. MAJOR BACK-UP CENTER VICTORIES

It was suggested at the hearings that most cases brought by back-up centers had no merit. Attached is a list of some successful major cases in which the back-up centers were involved, with a brief description of the holding in each case. This list is my no means complete.

3. SCREENING OF FRIVOLOUS CASES

I would like to expand upon my remarks indicating that the back-up centers contribute to the efficiency and effectiveness of the local programs by often counseling against the filing of cases which the centers determine to be frivolous.

In the National Legal Aid and Defender Association background materials appended to my written statement, it is noted:

"The centers have also prevented the filing of unwise or ill-conceived cases and, because of the experience and expertise of their staffs, assured proper professional handling of client problems. By their presence the 'backup centers' have developed a rational process for the resolution of recurring problems faced by clients throughout a state or nationally; created a vehicle to coordinate the efforts of local programs as they respond to client needs; and developed strategies based on traditional techniques which do not overtax the judicial system but seek an orderly and often efficient resolution through the judicial process."

In other instances, because of the practical expertise of back-up center staffs, local legal services attorneys can, where appropriate, be steered away from wasteful and inefficient litigative strategies toward administrative and legislative solutions which better serve the needs of their clients.

4. ALLEGATIONS OF MR. ARTHUR WEST

We have discussed with Mr. Salvatore Tio, director of Puerto Rico Migrant Legal Services, and Mr. Gridley Hall, director of the Farmworker Division of Camden Regional Legal Services, the charges made by Mr. West at the October 31 hearing held by your Subcommittee. Both directors have strongly denied the allegations.

In particular, Mr. Tio informs us that attorneys in his program representing clients who have filed actions against the New Jersey growers associations in question have repeatedly offered to negotiate with Mr. West on the condition that workers be provided with a daily breakdown of hours worked on their pay stubs. Mr. Hall informs us that he knows of no grievances filed by Mr. West with the State Bar against attorneys in the Farmworker Division. (Note that the Unauthorized Practice Committee of the New Jersey State Bar is currently considering questions raised about legal services attorneys who are authorized to practice by the New Jersey Supreme Court, though not yet admitted to the New Jersey Bar. However, this matter has nothing to do with the representation of farmworkers.)

Both Mr. Tio and Mr. Hall confirm what Mr. West himself as much as admitted, that no legal services back-up center was counsel in any of the cases mentioned by Mr. West.

Thank you for your consideration of H.R. 7005.

Very truly yours,

JOHN G. BROOKS,
Senior Vice President.

CENTER ON SOCIAL WELFARE POLICY AND LAW

Goldberg v. Kelly, 397 U.S. 254 (1970)—Established right of recipient to hearing before denial of welfare benefits.

Rosado v. Wyman, 397 U.S. 397 (1970)—Established right to enforce federal welfare law in federal courts.

King v. Smith, 392 U.S. 309 (1968)—Struck down Alabama's man in house rule.

Shea v. Vialpando, 94 S. Ct. 1746 (1974)—Enforced federal right of working AFDC recipient to have all working expenses disregarded.

Boddie v. Wyman, 402 U.S. 991 (1971)—Required state to justify geographical discrimination in benefits.

HOUSING LAW PROJECT

Housing Authority of Ohama v. U.S. Housing Authority, 486 F. 2d 1 (8th Cir. 1973) (cert. denied 2/20/73)—Upheld validity of HUD lease and grievance circulars.

Lindsey v. Normet, 405 U.S. 56 (1972)—Double appeal bond in state eviction proceeding held to violate equal protection clause.

Green v. Superior Court of the City and County of San Francisco, 10 Cal. 3d 616, 517 P. 2d 1168 (1974)—Established warranty of habitability in residential rentals.

Turner v. Blackburn, 389 F. Supp. 1250 (W.D.N.C. 1975) (three judge court)—Held power of sale statute for residential property unconstitutional because of inadequate notice and inadequate hearing.

Geneva Towers Tenant Organization v. Federated Mtg. Investors, 504 F. 2d 483 (9th Cir.) 1974—Established due process rights to notice and written submission in regard to rent increases for tenants in federally subsidized housing.

NATIONAL CONSUMER LAW CENTER

Mourning v. Family Publications Service, 411 U.S. 356 (1973)—Upheld authority of FRB rules on truth-in-lending.

Fuentes v. Shevin, 407 U.S. 67 (1973)—Established due process rights in replevin actions.

NATIONAL EMPLOYMENT LAW PROJECT

Galvan v. Levine, 490 F. 2d 1255 (2nd Cir. 1973)—N.Y. state law denying unemployment compensation for Puerto Ricans who returned to P.R. after losing jobs in N.Y. held a violation of equal protection.

Sims v. Local, 489 F. 2d 1023 (6th Cir. 1973)—Local unions use of arrest and conviction information, high school education requirement, and oral interviews under the circumstances held racially discriminatory.

Crockett v. Green, 388 F. Supp. 912 (E.D. Wis., 1975)—Found illegal discrimination by City of Milwaukee in filling skilled craft positions; enjoined use of written test.

Christian v. N.Y. State Dept. of Labor, 414 U.S. 614 (1974)—Challenged denial of fair hearing to federal employees on reason for their dismissal as it related to state unemployment benefits.

MIGRANT LEGAL ACTION PROGRAM

NAACP v. Brennan, 360 F. Supp. 1006 (D.D.C., 1973)—Department of Labor ordered to insure that farmworkers are given the full range of state employment security office services.

El Congreso v. Dunlop, Civil Action No. 2142-73 (D.D.C., October 7, 1975)—OSHA ordered to issue agricultural standards to protect farmworkers.

NATIONAL JUVENILE LAW CENTER

In re Wade ex rel Juvenile Dept. of Multnomah County, 527 P.2d 753 (Ore. Appeals Ct., 1974); cert. denied October, 1975—First state appellate decision holding that in a termination of parental rights proceeding in juvenile court, an indigent child has the right to appointed counsel.

Baker v. Hamilton, 345 F. Supp. 345 (W.D. Ky., 1972)—Held the pre-trial detention of children in jail to be unlawful.

Harris v. Bell, #73 CV 115-C (U.S. Dist. Ct., W.D. Mo., September 8, 1975)—In case involving conditions and practices in state training school for boys, required limits on solitary confinement, a review procedure for decision to discipline, curtailment of mail censorship, and prohibition on using local jail for discipline.

NATIONAL HEALTH LAW PROGRAM

Cook v. Ochsner Foundation Hospital, 319 F. Supp. 603 (D.C. La. 1970).
Euresti v. Stenner, 498 F.2d 1115 (10th Cir. 1972)—Enforced Hill Burton Act against local hospitals.

Bond v. Stanton — F. Supp. — (N.D. Ind. Jan. 13, 1975)—Successful litigation involving Early Periodic Screening and Detection program.

Mr. KASTENMEIER. The Chair would next like to call Mr. Carl Eardley to testify. Mr. Eardley served in a number of capacities in the Department of Justice and elsewhere in Government. He was, at one point, Director of Litigation and Deputy Assistant Attorney General in the Civil Division of the Justice Department.

We are very pleased to hear Mr. Carl Eardley.

TESTIMONY OF CARL EARDLEY, WASHINGTON, D.C.

Mr. EARDLEY. Mr. Chairman, and members of the subcommittee, I am here in a very modest capacity. I am a private attorney who is an unpaid consultant for the Legal Services Corporation. I do not speak for the Corporation. I am not an expert in the field of backup centers. As a matter of fact, I will be honest and say I had never heard of them until about a month or two ago. I got into this because, as a deputy for many, many years in the Civil Division of the Justice Department, I had to follow and attempt to control thousands of cases which were being processed in the field, and I am somewhat expert in the need for specialized legal services. The Department of Justice and the Federal Government practice, if not a policy, is to have specialized legal services because it is efficient and economical. If the backup centers were to be eliminated, the high quality of legal service which the Legal Services Corporation Board is aiming at would disappear. The cost would be high since you would either have to put several times as many people in the field or you would have people duplicating their efforts all over. That is one thing that the backup centers do for the local programs just the same as the Government does in almost every field. They call in and report that they have a very complicated question involving welfare laws. Can the backup center give help? And the same way in the Department of Justice. That is what we were doing through a great many selected areas.

I don't believe, I can't believe, that there can be any question about the need for the specialized legal services which are in this case the backup centers. It seems to me the only question is a legal question of who is going to be able to provide it, and there it seems to me, you are going to run into many problems.

I read some of this legislative history. In fact, I read quite a number of briefs on the question of what this act means, and the only thing that was consistent was the fact that they could not agree. There are some people who take the position that the backup centers go, period, that the work has to all be taken over by the Corporation. I as a lawyer am not able to accept that. One, because it is, as I mentioned inefficient, uneconomical, and will defeat the objective of the act. Furthermore, and I think this is something that must be continuously kept in mind, and that is that the act forbids the Corporation to participate in litigation.

Now, I suggest that if this amendment is not passed, and I, of course, am here in support of the amendment, I think it is an absolute necessity, if the amendment is not passed, the question is going to arise as to whether the Corporation can furnish briefs, legal memos, and do the work that is now being done by the backup centers, and I suggest to you that it is very dubious that a corporation which cannot participate in litigation can influence if not totally direct litigation through furnishing legal memos and other legal aids. That will have to be decided.

Another more likely interpretation of the act, in view of all of its manifestations, is that the general research can be carried on by the Corporation and the specialized case-oriented research by backup centers. Well, I suppose if it had to be done, it could be done, but I have thought of the many functions which these centers perform, and if you are going to bifurcate the functions, it is going to be almost impossible to know what is proper for the Corporation and what is proper for the Center. Therefore, H.R. 7005 is the one useful way to eliminate a good many administrative problems and probably litigation, since I would suggest, if the Corporation tried to practice law by saying, here, this is the brief you should file in a case, then you are going to have litigation contesting the right to do that.

I heard some testimony this morning about abuses. I am a private practitioner who is also now an unpaid consultant for the Legal Services Corporation, and one of the functions that the corporation has asked me to perform is to assist an evaluation team which is studying the backup centers. Now there isn't any question about what evaluation is needed. I have read over the evaluation of seven centers, not in preparation for this testimony but because I knew that I should know something about it before I went out into the field to take a look, and I must say that although there was some sharp criticism of some of the centers, particularly one, most of the reports were favorable, and I understand these evaluation teams that went out a couple of years ago did not go out with any motivation to prove that the evaluation centers were valuable. But they did come out and there wasn't any question but that the teams reported back that the evaluation centers were performing some very useful work and were needed.

I hope this bill will pass, but in any event, if it doesn't pass, it is going to create a real problem for people evaluating the support centers, because we don't know what services are going to be carried out until somebody with the wisdom of Solomon is able to bifurcate all of these various functions that are now being performed.

For example, you take a handbook. You say, well, the handbook, that is a general research. But let's suppose that a center gets a request from a field lawyer stating that he has a big problem on housing law, and the center then learns that this same issue is up before any number of others field attorneys and so it says, well, we had better do a big job and get out a handbook telling them what the procedures are and what the law is and calling their attention to the latest cases, and they sent that handbook out, not just to the man who initiated the request for help, but to the other field offices.

Is that general research or is that case-oriented research?

Now, that kind of a question is going to have to be decided if there is going to be the bifurcation which has been suggested.

I have heard some talk about the legislative history. Naturally, being a lawyer, I read a lot of the colloquy that went on in Congress, but it

seems to me the one thing, at least this morning, and I have not been privy to all of the testimony here, but one thing that hasn't been mentioned is that although the House went for the so-called Green amendment, the fact is that both the House and Senate at the end favored the kind of language that this committee has incorporated in H.R. 7005. And the only reason it wasn't enacted into law was because the word came back that the President might veto it. And, of course, a bill is better than nothing.

Well, I am suggesting that I think in fairness to the new President, and I hope I am not being presumptuous in stating this, that he should be given an opportunity to correct the mistake of the last President, so that the will of the entire Congress can be carried into law.

I also noted that in connection with the legislative history there was a lot of criticism arising out of this Detroit desegregation case, and so forth, but when I read the legislative history, it seemed to me that the Congressmen who were particularly aggrieved by certain activities of the centers made it very clear in the legislation that that kind of activity was not to go on because such things as nontherapeutic abortions, violation of the Selective Service Act, desegregation, and activity in political matters have expressly been prohibited.

So I join in with the last gentleman who stated that you have a board there of responsible people. Whether they are conservative or liberal, to me is irrelevant. Congress has mandated high quality service, efficient service, economical service, and in my judgment it is going to be hard to reach those goals unless the Congress is persuaded that H.R. 7005 is proper and enacts it.

I thank you.

Mr. KASTENMEIER. Thank you, Mr. Eardley, for a very able statement. I would like to yield to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Eardley, I appreciate your statement very much and also appreciate in particular your experience which is going to be very helpful to us.

How did you happen to take an interest in this particular legislation?

Mr. EARDLEY. All right. Several years ago I was a Deputy Assistant Attorney General in the Civil Division of the Justice Department when Lou Oberdorfer was the head of the Tax Division of the Department of Justice. Then approximately 2 months ago I received a telephone call from Lou who is now the acting general counsel and a consultant to the Legal Services Corp. He told me that he needed some help on evaluating the usefulness of the backup centers, specialized support centers which aid the legal services programs. At the time I was unfamiliar with the particular centers, however, I felt as a lawyer who had worked for so many years in the Department of Justice where we had a tremendous case load exactly as in this instance, that proper legal representation required the assistance of specialized attorneys. The Federal Government has a Federal Power Commission, the Federal Trade Commission, the Department of Justice, and other agencies who have lawyers specializing in various fields. That is how I became involved in the issue of specialization.

Mr. RAILSBACK. In reference to that, say you had a U.S. attorney out in the field who had a particularly difficult legal problem. Would he seek the assistance of the Justice Department in having somebody who was more expert than he helping him resolve that legal, knotty problem? It seems to me, based on your experience, that there might be an analogy made between having the corporation, which could perhaps be identified with the Justice Department, provide that kind of central assistance directly through experts developed within the Department itself in Washington rather than having any kind of people that were out in a regional type justice center, or backup center.

Mr. EARDLEY. Well, in response to that, the Department of Justice is not prohibited from participating in litigation.

Mr. RAILSBACK. Right.

Mr. EARDLEY. That is a function of the Department of Justice. Its attorneys go out into the field to take charge of cases that have great precedential effect. If the act did not carry the prohibition against litigation by the corporation, then I would say that it might be very economical and efficient to focus the centers in Washington or in some other central area. But in view of the prohibition, I just don't see how it can be done.

Mr. RAILSBACK. That is what I wanted. Really the distinction you are suggesting is that backup centers, because they have litigators that are part of the center, can provide more direct and more expert help.

Mr. EARDLEY. Right. I have a friend who is interested in this field, and he furnished me a copy of the handbook prepared by the National Employment Law project with respect to title VII litigation. I went over the handbook including a model complaint and found it absolutely excellent work. I would have been proud to have had it done by the Civil Division. It was excellent. And having read all of the reports on seven of the centers' evaluations with only one strong dissent, I have trouble believing that the centers were not engaged in very, very useful work for the poor.

Mr. RAILSBACK. Just to conclude my time, it would seem to me, however, that if the corporation sought to provide training or information dissemination for field people, that could be done by even bringing to the corporation people that are the expert litigators, throughout the country, and if necessary, put them on the corporation payroll.

Mr. EARDLEY. Well, I think that training is not different in this respect than research. I think that I can conceive of situations where generalized training would be quite different from a particularized training which was case oriented.

For example, supposing some attorney called into a center and said, I have got this problem. I haven't had any experience in handling this kind of a case. I need help. The center says, well, you have got the same problem as 14 other lawyers in different parts of the country. Why don't you come in and we will have a seminar and have a little training program on how to handle these particular cases.

Is that generalized training or is that case-oriented training? That is difficult.

Mr. RAILSBACK. Yes; thank you.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you very much, sir, for your statement. I hope that eventually the administration will take this view and that you will be speaking eventually for the administration.

But going back to the question I raised with Mr. Brooks, is there any way to construe the present act as justifying the continuation of litigation centers? As you may know, the board of directors of the corporation did in fact get an opinion from their counsel to the effect that if the purpose of the Green amendment was to eliminate the funding of independent legal services, backup or support centers, then the amendment failed to achieve its purpose. The corporation is already forbidden from entering into litigation and it is impossible to assert and vindicate the rights for our people without litigation.

Therefore, the only way that the corporation can in fact fulfill the purposes of the act is to have litigation done by contract.

Mr. EARDLEY. Right.

Mr. DRINAN. I raise this next question because the American Bar Association represented by Mr. McCalpin was here the other day, endorsing the bill before us, and Mr. McCalpin raised this point, that the Legal Services Corp. counsel had in fact argued that the backup center functions could be bifurcated, but Mr. McCalpin disagreed with you about it. How do you explain your position?

Mr. EARDLEY. During 40-plus years practice, I have tried to interpret a great many statutes, and when you interpret a statute, you try to find out what the objective of the statute is, and then, when you have language which is ambiguous, as I believe this language must be construed to be, then you try to interpret that ambiguity so that the intent of the statute will not be defeated.

Now, in this particular instance, you have high quality legal services. You also have a statement in there that the Corporation wants to continue the same legal services.

Well, if that is true and if, as in my opinion, you can't get the high quality legal services without construing 1006(a) (3) as bifurcating at best the research which is case oriented against generalized research, then that is the way it should be interpreted, that the centers will continue to backup the field lawyers with respect to their litigation problems.

Mr. DRINAN. No one around here knows what the Green amendment means. As you undoubtedly know, it was reinserted into the legislation at the last possible hour after the bill had emerged from the conference committee and after it had passed the House and no hearings were ever held on it, so I really don't know what the amendment was intended to do. And I think you put your finger on it when people raised in debate on the floor, wrongly really, that they had been improperly involved in abortion cases or political issues and desegregation issues, and as you suggested, some of those, all of those already were forbidden by the 1974 act.

I thank you for your testimony. It has supplemented and strengthened and clarified in my mind the necessity for this legislation. I guess we have to have the legislation.

I thank you very much, sir.

Mr. EARDLEY. Thank you, sir. I might say that with respect to the Green amendment, that language was not conceived by any particular Congressman at that time. That language was almost taken verbatim from the old act which provided for these services. It had a series of community services, including the Legal Services office and then at the tail end, there was a little provision in there saying that they can provide research, training, technical assistance.

Mr. DRINAN. Thank you.

Mr. KASTENMEIER. The gentleman from New York.

Mr. PATTERSON. I have no questions.

Mr. KASTENMEIER. If there are no further questions, then I would like to thank the witness in behalf of the committee for his appearance here this morning.

Mr. EARDLEY. Thank you for the opportunity to appear.

[The prepared statement of Carl Eardley follows:]

STATEMENT OF CARL EARDLEY RE H.R. 7005

My name is Carl Eardley. I am presently engaged in the practice of law as Of Counsel to the firm of Ruckelshaus, Beveridge, Fairbanks and Diamond. For thirty-two years I was employed by the Department of Justice, first as an Assistant United States Attorney in Los Angeles, and in later years as Director of Litigation and Deputy Assistant Attorney General in the Civil Division. I also served for two years as an Assistant Deputy Administrator of the Environmental Protection Agency where my responsibility was enforcement of federal laws relating to water pollution. I am very appreciative of the opportunity given me to appear before this Committee in support of H.R. 7005.

The section which H.R. 7005 proposes to amend apparently had its derivation in the Equal Opportunity Act (42 U.S.C. 2809(3)) which authorized a legal services program which would provide legal advice, counseling, representation and other appropriate legal services to the poor and disadvantaged; and which contained a later section (2809(b)) dealing with this and many other community action programs, which section provided that programs under this section may include training, research and technical assistance.

This language appears to have found its way into the Legal Services Corporation Act under consideration. OEO, operating under this earlier statute funded back-up centers which conducted research and furnished training and technical assistance; and it could be broadly concluded that Congress had no intent to depart from the basic programs funded by OEO; for it will be noted that in Section 1001(2) of the Act Congress expressly stated that there is a need to "continue the present vital legal services program." However, the precise language of Section 1006(a) (3) can be interpreted otherwise, hence, the need for clarification through H.R. 7005.

The Legal Services Corporation Act has the objective of providing high quality legal assistance to the poor in civil cases. Unfortunately, there are some ambiguities in the Act which, unless resolved, could adversely affect the implementation of that objective. The Act explicitly prohibits the Corporation from conducting litigation on behalf of clients but it also provides that the corporation is authorized to undertake directly and *not* by grant or contract the following activities relating to the delivery of legal assistance: A. research, B. training and technical assistance, and C. to serve as a clearinghouse for information.

Litigation to the layman probably relates to court appearances. But, as we know, the proceeding before a judicial tribunal is but the final act in the litigation process. To prepare for the appearance the lawyer must be trained, and in any but the most perfunctory matters he must engage in research, and in complex cases he may require technical assistance in accounting, engineering or other areas of expertise. The question posed by the language of Section 1006(a) (3) is whether Congress intended to have the Corporation's employees perform these various preliminary acts, leaving the funded institutions to provide for the court appearances.

At the present time, as I noted, local legal services organizations and other grantees are furnishing complete legal assistance to the client, through field offices and through the back-up centers. The attorneys in the field offices, mostly young, often inexperienced, handle the vast majority of the direct face to face work with and for the client. The centers by and large are training and research oriented. Their research efforts are directed to analysis of legal issues which are likely to arise in many jurisdictions. It would be quite wasteful if attorneys of varying skills and different attitudes in various parts of the country were to engage in the same research. Not only might the product frequently be inferior, but there might be conflicting positions taken before different courts. Hence, the need for and the usefulness of the back-up centers. They provide stability and

continuity to the program—which is especially important considering that the yearly turnover rate in the field offices is high, ranging between 30–45%.

There is a back-up center which specializes in housing problems; another center focuses on cases involving discrimination in employment; another on welfare, etc. For example, the employment center has prepared a comprehensive handbook for use by field attorneys who have cases under Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination by employers because of sex, color, race, religion or national origin. This handbook reviews the coverage and procedural requirements of the Act, examines the judicial interpretations of Title VII, and also summarizes the law applicable to non-Title VII remedies when there is alleged employment discrimination. The usefulness of this handbook to the field attorney cannot be exaggerated. I have examined it and can vouch for its excellence. The center has also prepared a model complaint and a model set of interrogatories, each of which required major research.

Contentions have been advanced arguing that because of Section 1006(a) (3) the Corporation must assume most of the responsibilities now lodged in the centers. Since the Corporation cannot engage in litigation, and since research is the essence of the litigation effort this possible bifurcation of the litigation process does not appear to be either logical nor would it produce an efficient program.

Now let us consider the training programs. Some centers have implemented their assistance to the field by conducting seminars, designed to educate the field staff in the particular legal problems within the orbit of the center's responsibilities. And here the ambiguity of the Act is pointed up by Section 1007(b) (5) which proscribes grantees from conducting training programs which encourage strikes, boycotts, demonstrations and the like, but which goes on to say, "except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients." This language on its face seems to approve training programs by grantees, as long as it is litigation oriented. But this is inconsistent with the argument that such training must under Section 1006(a) (3) be conducted by the Corporation.

The phrase technical assistance is even more clouded. It has been variously interpreted to include provision of: (a) clearinghouse service, (b) program planning and development assistance, (c) data retrieval, and accounting aid, (d) evaluation studies, and (e) substantive law assistance.

Thus, it appears that in the absence of Congressional clarification of its intent with respect to research, training and technical assistance there could be dispute and dissension within the Legal Services Corporation itself, as various members of the public and of the Board of Directors, in good conscience, support conflicting opinions.

The enactment of H.R. 7005 will go a long way to avoid misunderstanding and possible litigation concerning the construction of the Act. In the final analysis, it is presumed that the Board of Directors of the Corporation is composed of rational and responsible persons, capable of making those decisions needed to provide and to maintain the high quality legal services mandated by the Congress, and it is my opinion that resolution of the Act's ambiguities is vital if its objectives are to be reached in an orderly and efficient manner. By giving the Corporation the authority to decide whether research, training and technical assistance are to be conducted in-house or through grantees or contractees the possibility of contentious individuals contesting the Corporation's interpretation of the Act is removed.

In conclusion, I have been informed that the staff of the Corporation is now preparing a paper relative to the usefulness of specialized legal services—which upon receipt I shall forward to this Committee, if it so desires.

It is my belief based on my experience with governmental agencies involved in the handling of large case loads that the usefulness of such centers, if adequately staffed, is not subject to serious challenge. High quality legal services require resort to specialists in the many complex areas of law which confront the lawyers for the poor. I thank you.

Mr. KASTENMEIER. That concludes testimony on bill H.R. 7005. I hope that we can close the record perhaps by Monday. We do have the revised statement for the record submitted by F. William McCalpin on behalf of the American Bar Association. And we will

then have the record printed shortly thereafter. It is my hope too, that in an early executive session we can resolve the matter and markup the legislation. The issue is relatively simple, and I think we must finish it.

In any event, the Chair wishes to thank those who have testified, and now the committee stands adjourned.

[Whereupon, at 12 noon, the subcommittee adjourned, subject to the call of the Chair.]

STATEMENT BY HON. HERMAN BADILLIO, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

The Subcommittee on Courts, Civil Liberties, and the Administration of Justice has just completed two days of hearings on H.R. 7005. That legislation will authorize the new legal services corporation to continue the national, multipurpose support centers, often called back-up centers, which are now such a critical part of the federally-funded legal services program.

The Committee has taken extensive testimony on the value and worth of the back-up centers. We found that the national back-up centers provide an essential resource to Legal Services attorneys. They have been instrumental in providing to Legal Services attorneys and their clients a continuous, systematic means of monitoring important federal law, they have enhanced the likelihood of fairness in the administration of federal benefits, and, to a substantial degree, they have reduced many of the abstract rights created by federal legislation to concrete benefits. They have provided the poor with specialized legal assistance in areas of the law where specialization is essential.

I would like to speak at this time, however, of the work of the two national back-up centers located in New York City—The Center on Social Welfare Policy and Law, and the National Employment Law Project—and describe how they have helped in New York City.

Our local Legal Services attorneys have made a valiant effort to insure on a day to day basis that the courts and the legal process offer to minorities and the urban poor effective vehicles for the protection of basic human rights. But access to the courts and effective utilization of the legal process depend on adequate legal resources. While local Legal Services offices in New York have done a fine job, it is clear that they need and depend upon the support of specialists in major litigation and other legal matters requiring the application of complex federal, state and local laws to the immediate needs of an indigent client. It has therefore been most fortunate that Legal Services attorneys, in New York and elsewhere, have been provided with these specialists through the back-up centers, which have been committed to serving the clients, of the local programs with all the experience and skills necessary to provide legal assistance of the very highest quality.

Let me give some examples. Discrimination in the construction industry is especially odious. In New York as well as in every major city in the United States, there are capable, fully trained and skilled workers who are members of minority groups. These people have traditionally been denied access to powerful unions through a variety of devices such as nepotism, needless educational requirements, standardized tests and long periods of required apprenticeship. Two cases brought by the National Employment Law Project tackled this problem in New York City.

At the time *Rios v. Local 638, Steamfitters*, 51 F. 2d 622 (2d Cir. 1974), was commenced, fewer than 40 blacks and Puerto Ricans were members of the defendant union. At present, after three years of complex, time-consuming litigation, as a direct consequence of the *Rios* action, more than 800 non-whites have been admitted to the union and more than 500 blacks and Puerto Ricans have been employed to perform jobs they were illegally barred from performing in the first place.

In *Percy v. Brennan*, promulgation of Department of Labor regulations which would have debased the affirmative action requirements imposed on the construction industry in New York by the "New York Plan" was challenged. As a result of the litigation, the repressive regulation was withdrawn and the requirements of the New York Plan are in effect.

In the unemployment compensation area, the poor have benefitted from the support provided by the National Employment Law Project to neighborhood Legal Services attorneys. In *Galvan v. Levine*, 490 F. 2d 1255 (2d Cir. 1973), the Project, providing litigation support to Community Action for Legal Services, successfully challenged the constitutionality of the then extant New York State policy of denying unemployment in New York under conditions which would entitle them to benefits, returned to Puerto Rico.

The other New York City-based National Back-up center, the Center on Social Welfare Policy and Law, has been highly effective in securing the rights of the poorest of our citizens to cash and medical assistance. I might note that the Center on Social Welfare Policy and Law was the first of the legal services back-up centers, and that is now completing a full decade of service. Its accomplishments have been many, and it has helped New Yorkers mightily.

Thus, when the New York legislature proposed to deny medicaid benefits to 600,000 needy children and elderly persons in violation of federal law—benefits totalling some \$366 million, the Center filed *Bass v. Richardson*, 338 F. Supp. 478 (S.D.N.Y. 1971) and *Bass v. Rockefeller*, 331 F. Supp. 945 (S.D.N.Y. 1971) to stop the cutbacks. These suits provided many people in other states where illegal cutbacks in medicaid were being considered.

Similarly, when New York refused to comply with federal regulations establishing the right to a hearing before basic public assistance grants were cut off or reduced, the Center joined with Bronx Legal Services to enforce the federal regulation, and succeeded. *Almenares v. Wyman*, 453 F. 2 1075 (2d Cir. 1972). Incidentally, the plaintiffs in the *Bass* and *Almenares* cases came from my home borough of the Bronx.

These back-up centers provide much more than litigation assistance. Both the Center on Social Welfare Policy and Law and the National Employment Law Project have prepared practice manuals for legal services lawyers. Indeed, the Center had modified its 200 page SSI Advocates Handbook to be directly applicable to the State of New York. Back-up centers elsewhere in the country have performed similar services.

It would be tragic for poor people and legal services lawyers in New York City, and the entire country, if back-up centers like the Center on Social Welfare Policy and Law and the National Employment Law Project cannot be continued as independent national multi-purpose programs. Unfortunately, their funding under the old legal services program expires at the end of March 1976. Accordingly, the need for H.R. 7005 is most urgent.

I am pleased to note that the organized bar in New York City has supported this legislation and the work of the Center,

[Subsequent to the hearings the following correspondence was submitted for the record:]

SOCIETY OF AMERICAN LAW TEACHERS,
New York, N.Y., November 7, 1975.

HON. ROBERT W. KASTENMEIER,

Chairman, Subcommittee on Courts, Civil Liberties and Administration of Justice,
Rayburn Building, House of Representatives, Washington, D.C.

DEAR MR. KASTENMEIER: I am writing on behalf of the Board of Directors of the Society of American Law Teachers, an organization of about 500 members from law schools throughout the country, to endorse strongly the passage of H.R. 7005.

The Legal Services Corporation Act now unwisely limits the freedom of the Corporation's board of directors to decide for itself the most effective method of achieving its purposes of assuring a high quality of legal services for the poor. The Corporation is, we understand, prevented from contracting for "research," "training," "technical assistance" and "clearinghouse" activities. Congress should remove the obstacle.

The President has nominated, and the Senate has confirmed, a distinguished board of directors. The board in turn has obtained two very able persons as the principal executive officers. These officials should now be given a free hand to decide the most effective way to carry out the broad and important mission with which the Corporation was charged.

The impetus for the provisions constricting the Corporation's freedom of action was a desire to cripple the so-called back-up centers. Many of these centers were

affiliated in their early days with law schools. The centers have, we believe, generally maintained a high standard of competence and professionalism, aiding thousands of practicing legal services attorneys across the country and participating in some of the most important litigation of the last decade.

The Corporation may decide that it should no longer maintain a relationship with some or even all of the existing centers. On the other hand, it should be free to contract out for the provision of these necessary services if it determines that it is in the Corporation's best interests to do so. H.R. 7005 provides that freedom and thus should be passed.

Sincerely,

NORMAN DORSEN,
President.

BOSTON BAR ASSOCIATION,
Boston, Mass., November 18, 1975.

HON. ROBERT W. KASTENMEIER,
U.S. House of Representatives, Chairman of the Subcommittee on Courts, Civil Liberties and Administration of Justice, Rayburn Office Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: Please find enclosed a copy of the resolution which was adopted by the Council of the Boston Bar Association on November 6, 1975. We, as representatives of the organized Bar, feel that it is extremely important that H.R. 7005 be passed to enable the Legal Services Corporation to provide certain vital research, technical assistance and information clearing house services by grant or contract.

There is no more important obligation and responsibility today on the organized Bar as well as the Congress than to the implementation of delivery of legal services to the poor.

Kindest personal regards.

Sincerely,

EDWARD J. BARSHAK,
President.

Enclosure.

BOSTON BAR ASSOCIATION

This is to certify that at a meeting of the Council of the Boston Bar Association, held November 6, 1975, the following Resolution was adopted:

Whereas the Legal Services Corporation Act will prohibit the Corporation from providing certain vital research, technical assistance and information clearing house services by grant or contract; and

Whereas the existing research, technical assistance and information clearing house centers, commonly known as "back up" centers, have been established by grant or contract and have been providing invaluable expertise and assistance in such areas as housing, welfare, employment, education, social security and consumer law to legal service programs throughout the country; and

Whereas, H.R. 7005 would permit the Legal Services Corporation to continue to provide by grant or contract, as the Corporation may deem necessary, research, technical assistance and information clearing house services relating to the delivery of legal assistance; now, therefore, it is

Resolved that the Council of the Boston Bar Association strongly supports H.R. 7005 or any similar legislation which would provide the Legal Services Corporation the authority to select the most effective method of providing research, technical assistance and information clearing house services, whether directly or by grant or contract; and it is further

Resolved that the Secretary of the Boston Bar Association be directed to communicate this endorsement of H.R. 7005 to Representative Robert W. Kastenmeier and the Massachusetts Members of Congress.

Witness my hand and the seal of the Association this 12th day of November, 1975.

RICHARD BANCROFT,
Secretary.